

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION NINE

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED,
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO

and

Case 09-RC-220731

EQT CORPORATION

**EQT PRODUCTION COMPANY'S REQUEST FOR REVIEW OF REGIONAL
DIRECTOR'S DECISION AND CERTIFICATION OF REPRESENTATIVE AND
BREIF IN SUPPORT THEREOF**

Pursuant to Sections 102.67 and 102.69 of the Rules and Regulations of the National Labor Relations Board, EQT Production Company¹ ("EQT" or the "Company") files the following Request for Review of Regional Director's Decision and Certification of Representative.

INTRODUCTION

The facts presented at the July 18, 2018 hearing on EQT's Objections to Conduct of the Election and Conduct Affecting Results of the Election (the "July 18 Hearing") establish both: (i) wrongful conduct and (ii) critical policy implications regarding the conduct and secrecy of elections, each of which require that the June 21, 2018 election to be set aside. The undisputed evidence shows that multiple employees photographed their ballots, and thereby destroyed the requisite secrecy of the election. In addition, the evidence establishes that the photographing of ballots was done as part of a pre-conceived plan (or desire) to prove or be able to prove who did, and who did not, vote in favor of the Union. According to employee testimony presented at the July 18 Hearing, employee Union supporters wanted to prevent voters from verbally expressing

¹ On July 18, 2018, Diversified Gas & Oil PLC acquired from EQT Production Company the operations at issue in this matter.

Union support, while at the same time actually choosing to vote against Union representation, as reportedly had been the case in a previous election lost by the Union. There also is evidence that an unauthorized list of voters was kept through the collection of 61 pictures of “Yes” votes on an employee’s personal cell phone. Despite the Union’s later efforts to discredit such evidence as mere joking around, the need to even consider such evidence demonstrates the tainted nature of the June 21 election due to employees’ use of cell phone photos that impaired the secret nature of the ballot.

“The secrecy of the ballot is essential in a Board-conducted election, and it may not be jeopardized” and “[i]t is manifestly essential that employees be balloted in a secret election, for the secret ballot is a requisite for a free election.” *Northwest Packing Co.*, 65 NLRB 890, 891 (1946); *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957). Here, the evidence indisputably shows that the secrecy of the election was compromised, and the necessary laboratory conditions and integrity of the election were corrupted. Whether by design or by effect, the employees’ use of cell phones to take pictures of ballots—pictures that could later be used for the express purpose of proving how those employees voted—created an environment ripe for coercion and reprisal, and eliminated fundamental protections guarding employees from pressure to prove the way in which their ballots had been cast. Thus, the Hearing Officer and the Regional Director reached incorrect conclusions regarding both the evidence presented at the June 21 hearing and the application of EQT’s cited Board precedent.

The Regional Director states that the enactment or implementation of any election rule banning cellphones and other recording devices within voting booths or within the voting area is solely within the Board’s purview. *See* Regional Director’s Decision and Certification of Representative (“Decision”), p. 6 n.11. Likewise, the Union contends that “there is no case law

indicating that taking a picture of a ballot for one's own records is objectionable conduct" and that employees "were never given any indication they could not take a picture of their ballots, because no such rule exists." *See* Union's Post Objections Hearing Brief, pp. 7-8; Petitioner Union's Brief in Response to the Respondent's Exceptions to the Hearing Officer's Decision, p. 10. If that is the case, then the Board's rules and precedent have fallen behind the available technology, and the Board should take action to ensure that the laboratory conditions and integrity of the voting process can be maintained in a world where nearly everyone has a cellphone with a camera in their pocket.

Therefore, Board review is appropriate here for three independently sufficient reasons pursuant to sections 102.67(d)(1), (3), and (4) of the Rules and Regulations of the National Labor Relations Board: (i) this case raises substantial questions of both law and policy because of the absence of or a departure from officially reported Board precedent; (ii) the rulings made in connection with this proceeding have resulted in prejudicial error; and (iii) there exist compelling reasons for reconsideration of an important Board rule or policy.

Accordingly, in order to retain the primacy of the secret ballot, to preserve the laboratory conditions and integrity necessary for the conduct of a fair and free election, and for the reasons stated in the record and herein, the June 21 election should be set aside, and a new election should be ordered in which cell phones and other recording devices are prohibited from the voting booth.

SUPPORTING MATERIALS

In support of this Request for Review, EQT relies on the facts, authorities, and arguments presented herein, the testimony and exhibits presented at the July 18 Hearing (collectively

attached as Ex. A hereto), and the prior briefing on this matter (collectively attached as Ex. B hereto).

FACTS

1. The Election.

On June 21, 2018, an election took place from 11:30 a.m. to 1:30 p.m. at the Pike County (Kentucky) Public Library to determine whether a group of EQT employees wanted to be represented for purposes of collective bargaining by the Union. There were 126 eligible voters. After the close of the election, the ballots were officially counted and the tally showed 63 votes for the Union, 53 votes against the Union, and 1 voided ballot. Ten eligible voters did not vote.

2. Mr. Olinger Openly Asserts That He Has 61 Pictures Of “Yes” Votes On His Personal Cell Phone.

Immediately after the close of the election, EQT held a safety meeting, which was attended by several employees and supervisors. Hearing Transcript (“Tr.”) 15:11-16:5; 27:19-24. Among the various EQT employees at the safety meeting were EQT Production Superintendent Christopher Bailey; EQT Assistant Superintendent of Production David Rhodes; and EQT Pipe Operator and Union supporter James Olinger. Tr. 17:16-25, 27:19-28:3, 75:14-16. The meeting was scheduled to start at 2:00 p.m., but at approximately 1:50 p.m., EQT Safety Director Jordan Pigman came outside and informed the employees that the meeting was going to start early. Tr. 19:24-20:4, 20:13-15, 29:5-23, 31:19-32:4.

Before the safety meeting started, Mr. Olinger was talking to Mr. Bailey outside of the community center building. Tr. 12:13-22, 23:5-24:3, 27:3-17. In that conversation, Mr. Bailey asked Mr. Olinger how Mr. Olinger thought the vote was going. Tr. 12:23-13:7. Mr. Olinger indicated that the Union had won and responded saying, “I’ve got pictures on my personal cell phone of 61 yes votes.” Tr. 13:15-17. Mr. Rhodes witnessed and overheard the comments from

Mr. Olinger. Tr. 23:5-20. At the July 18 Hearing, Mr. Olinger testified and freely admitted to making the statement to Mr. Bailey before the safety meeting. Tr. 72:3-5. It was not until approximately 15-20 minutes into the safety meeting that the actual election vote count was announced. Tr. 28:1-10, 57:7-11, 68:1-8.

3. Mr. Brashear Admits That Pictures Of Ballots Were Taken To Prove To Others How Employees Voted.

The morning after the election, on June 22, 2018, several EQT employees and supervisors at EQT office in Hazard, Kentucky were discussing the election and the fact that a ballot was voided and thrown out due to being marked outside of the lines. Tr. 35:20-36:13, 36:14-21. Included in the discussion was EQT Lead Assistant Superintendent Travis Cooke, EQT Lead Corrosion Technician Randy Brashear, and EQT employee Billy Joe Wells. Tr. 35:9-22.

Later that morning, Mr. Cooke had another conversation with Mr. Brashear about the voided ballot. Tr. 36:22-24, 37:8-16. While discussing the voided ballot, Mr. Brashear said, “I know it wasn’t me. I took a picture of my ballot and so did Freddie.” Tr. 37:10-16. Mr. Brashear was referring to EQT Lead Pipeline Operator Freddie Watts. Tr. 37:17-22.

Mr. Brashear explained that the reason he took the picture of his ballot was to prove that he had voted yes. Tr. 40:9-16. Mr. Brashear told Mr. Cooke that during the last election there were several people that had said they voted for the union, but there were only a handful of votes actually cast in favor of the union. Tr. 40:9-16. Mr. Brashear took a picture of his ballot to prove he had voted yes. Tr. 40:9-16.

At the July 18 Hearing, Mr. Brashear testified and freely admitted having taken a picture of his ballot. Tr. 81:7-8. Mr. Brashear referred to the last election as a “terrible election,” explaining that “[w]e had seventeen yes votes, but everybody we talked to voted yes, after the

fact.” Tr. 81:7-13. Mr. Brashear testified that to prevent people from claiming after the fact that they voted for the Union, when they actually had not, there were discussions and the decision was made to take pictures of ballots. Tr. 81:19-24. Mr. Brashear testified that “if we ended up losing this election like we did the last one, that everybody can’t come in, all one hundred twenty-six, and say, “Yes. We voted for it.” Tr. 82:1-4.

4. EQT Conducted A Narrow Investigation To Confirm The Legitimacy Of Reports.

After the June 21 election, EQT Corporate Security received several reports related to voters having taken pictures of their ballots. Tr. 42:17-24. The Company received reports of employees admitting having taken photographs of their ballots, observers having observed other employees taking photos while they were in the process of voting, and employees transmitting photographs of other ballots to other employees via their cell phones. Tr. 43:19-44:4.

After receiving the reports, EQT decided to take a careful approach and confiscate only the two phones belonging to Mr. Brashear and Mr. Watts. Tr. 44:8-15, 45:2-14. The decision was made to confiscate only their phones since Mr. Brashear was the only employee who had openly admitted that he himself as well as Mr. Watts had taken photographs of their ballots on their EQT Company cell phones. Tr. 44:8-15, 45:2-14. The purpose of confiscating the phones was to ascertain whether the employees had in fact taken pictures of their ballots. Tr. 45:11-14.

On June 25, 2018, EQT Corporate Security Manager Kevin Andrews and EQT Senior Director of Operations Maverick Bentley met with Mr. Brashear and Mr. Watts and confiscated their EQT Company iPhones. Tr. 44:16-23, 45:19-46:20.

When Mr. Brashear and Mr. Watts’s phones were later analyzed, it was confirmed that both individuals had taken pictures of their respective ballots. Tr. 48:14-19; EQT Hearing Exhibit 1. Mr. Brashear’s iPhone contained a picture of his voting ballot in the photograph application of the phone. Tr. 48:14-19. Mr. Watts’s iPhone contained a picture of his voting

ballot in the trash of the photograph application. Tr. 48:14-19. At the July 18 Hearing, a copy of the forensics report was admitted along with copies of the pictures that Mr. Brashear and Mr. Watts took of their respective ballots. Tr. 49:11-50:8; EQT Hearing Exhibit 1.

Although there was no evidence of the pictures being transmitted via text from Mr. Brashear or Mr. Watts's cell phones, the iPhone technology is designed so that if a message is deleted from the iMessaging application, it is not recoverable. Tr. 50:9-51:9.

ARGUMENT

1. The Secrecy Of The Election Was Destroyed When Employees Took Photographs Of Their Ballots.

It is well-established that “[t]he secrecy of the ballot is essential in a Board-conducted election, and it may not be jeopardized.” *See Northwest Packing Co.*, 65 NLRB 890, 891 (1946). “The Board has long held that ‘[i]t is of vital importance to the Board’s effectuation of the policies of the Act that the regularity of its elections be above reproach. And if the integrity of the Board’s election process is to be maintained it is manifestly essential that employees be balloted in a secret election, for the secret ballot is a requisite for a free election.’” *Columbine Cable Co.*, 351 NLRB No. 65, at 1087 (2007) (quoting *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957)). As recognized in the Board’s Outline of Law and Procedure in Representation Cases, “[c]omplete secrecy of the ballot is required by the Act and is observed in all Board-conducted elections.” NLRB OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES, Section 24-426, *Secrecy of the Ballot*, 370-7750, p. 379 (June 2017) (emphasis added). Indeed, an election must be set aside even where the circumstances only “raise doubts concerning the integrity and secrecy of the election” and “there is no affirmative proof that any person actually saw how the ballots were marked.” *See Columbine Cable Co.*, 351 NLRB No. 65, at 1088 (2007); *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957).

In this case, there is no question that employee ballots were not kept secret. The undisputed evidence establishes that at least Mr. Brashear and Mr. Watts took pictures of their ballots. This action is tantamount to taking an identifiable copy of a ballot away from the voting booth, and to do so in a format that may easily be shared, transmitted, and posted in countless different ways. In addition, Union supporter James Olinger independently asserted on the day of the election that he had *pictures* of 61 “Yes” votes on his personal cell phone. Although he downplayed his assertion at the July 18 Hearing as a “joke,” Mr. Olinger’s contemporaneous statement about *pictures of ballots* further calls into question the secrecy of the election, as well as how widespread the discussion of pictures was. Also, the near-perfect accuracy of the vote count asserted in his “joke” undermines his belated denial that his statement was not factual or sincere.

There is no way to know how far-reaching the unlawful conduct in the instant case actually was. The only way to obtain some certainty about the number of photographed ballots would have required EQT to confiscate every voter’s EQT Company cell phone, as well as every voter’s personal cell phone. Not only are there cost issues and administrative problems with doing this, as it would require EQT to provide temporary replacement Company phones to the 116 voters, but there are also privacy and other legal considerations with EQT subpoenaing and analyzing personal cell phones. Moreover, by taking such a heavy-handed approach, EQT could have been subject to complaints of retaliation or attempting to determine how individuals voted, based on unavoidable suspicions created by their own actions. Instead, EQT took a reasonable approach and confiscated only Mr. Brashear and Mr. Watts’s Company phones - both of which proved to contain photographed ballots.

Moreover, it is immaterial whether voters freely chose to take pictures of their ballots and waive the secrecy of their ballots. *See J. Brenner & Sons, Inc.*, 154 NLRB 656, 659 n.4 (1965). As the Board has held, “to give effect to such a waiver would remove any protection of employees from pressures, originating with either employers or unions, to prove the way in which their ballots had been cast, and thereby detract from the laboratory conditions which the Board strives to maintain in representation elections.” *Id.* “It is not material that the fear and disorder may have been created by individual employees and nonemployees and that their conduct cannot be attributed either to the Employer or to the unions. The important fact is that such conditions existed and that a free election was thereby rendered impossible.” *Diamond State Poultry Co.*, 107 NLRB 3, 6 (1954). Here, the secrecy of the ballot has been more than just jeopardized. At least two employees, and likely many more, took photographs of their ballots for the purpose of later proving how they had voted. Because complete secrecy was not maintained, and the required laboratory conditions and integrity of the election process was compromised, the June 21 election must be set aside.

2. Mr. Olinger Claimed To Have Kept An Unlawful List Of Employee Votes.

Long-standing precedent prohibits the keeping of unofficial lists of persons who have voted in an election. *See Sound Refining Inc.*, 267 NLRB No. 204, at 1301 (1983), *International Stamping Co.*, 97 NLRB 921, 922-23 (1951). An election must be set aside if “it was either affirmatively shown or could be inferred from the circumstances, that employees knew that their names were being recorded.” *See A. D. Juilliard and Co.*, 110 NLRB 2197, 2199 (1954); *Sound Refining Inc.*, 267 NLRB No. 204, at 1301-02 (1983). In cases where an unauthorized list of voters is kept, it is necessary to rerun the election in order to insure a fair, free and non-coerced election. *See Masonic Homes of California, Inc.*, 258 NLRB 41, 48 (1981) (“Impropriety has taken many forms in the cases, and one such is the keeping of lists of voters.”).

As he admitted at the hearing and as the Hearing Officer found, just after the election and before the results were known, Mr. Olinger told two managers that he had pictures on his cell phone of 61 yes votes. Tr. at 12–13, 23–24, 27, 72; Hearing Officer’s Report on Objections (“Report”) at 5. The morning after the election, employee Randy Brashear told a manager that he and another employee, Freddie Watts, took pictures of their ballots. Tr. 35–37; Report 6. Brashear admitted he took a picture of his ballot. Tr. 81; Report 6. Brashear further explained that the reason he took the picture of his ballot was to prove that he had voted yes because during the last election, many employees said they voted yes but there were only a few actual yes votes. Tr. 40, 81. Brashear actually admitted that there were discussions and the decision was made to take pictures of ballots to prevent people from claiming after the fact that they voted for the union when they actually had not. Tr. 81–82.

Additionally, the Company security officer testified that election observers saw employees taking photographs of their ballots and heard communication between employees about transmitting these photographs to each other. Tr. 43–44. Upon examination, Mr. Brashear’s and Mr. Watts’ phones contained pictures of marked ballots, and the picture on Watts’ phone was in the “Deleted” folder, indicating that he attempted to conceal the fact that he had taken it. Tr. 48–49. By collecting the pictures of ballots, Mr. Olinger assembled a list of persons who voted. Through his collection and receipt of the pictures, Mr. Olinger also would have automatically accumulated the corresponding transmission information, either a cell phone number, email address, or other information, that identifies the matching employee voter. This collection of pictures not only amounts to an unauthorized list of persons who voted in the election, it is worse, as it affirmatively identifies *how* each of the individuals voted. Moreover,

employees were necessarily aware of the list by their own action of transmitting their pictures to Mr. Olinger.

While Mr. Olinger now claims that he was joking, that it was “just an off the wall comment,” and that he did not actually have 61 pictures of ballots on his cell phone, in light of all the evidence, this testimony is not credible. First, there is no question that employees did, in fact, take pictures of ballots. Mr. Brashear even testified that the plan to take photographs was pre-conceived, discussed before the election, and done to prove how people voted. Second, Mr. Olinger’s statement about *pictures of ballots on his cell phone* is far too specific and unique to simply be an “off the wall comment.” The idea of Mr. Olinger making this up independently and at random is preposterous and could not have been a simple coincidence. Third, the number of 61 pictures was nearly dead-on with the 62 “Yes” votes later determined as the official tally. Fourth, at no point did Mr. Olinger present his personal cell phone for examination to disprove that he actually had the 61 pictures of ballots. When analyzed as a whole, Mr. Olinger’s testimony simply is not credible. Because the evidence establishes that an unauthorized list of employees who voted in the election was kept, the June 21 election should be set aside and rerun.

3. The Evidence Establishes A Coercive Election Environment Where Employee Free Choice Was Impossible.

Board law establishes that elections must be set aside if the circumstances were such that voters could have been intimidated in casting their vote in a less than secret atmosphere. *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957); *Imperial Reed & Rattan Furniture Co.*, 118 NLRB 911, 912-13 (1957). Even in situations in which there is no direct evidence that individuals observed how voters cast their ballots, if the voting environment and election circumstances raise doubts concerning the integrity and secrecy of the election, it must be set aside. *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957); *Imperial Reed & Rattan Furniture Co.*, 118 NLRB 911, 912-

13 (1957). At least one Board decision has set aside an election after employees were told to take photographs of their ballots. *See Atlas Roll-Off Corp.*, Decision and Direction of Second Election, Case No. 29-RC-114120, at FN 3 (August 6, 2014); *see also Atlas Roll-Off Corp.*, Hearing Officer's Report and Recommendations on Objections, Case No. 29-RC-114120, at 15 (March 20, 2014) (holding photographs of ballots to be analogous to chain voting).

Here, there is no doubt that an environment existed in which voters covertly took photographs of ballots in order to be able to later expose who did not vote for the Union. At the July 18 Hearing, Mr. Brashear testified that after the last election in which the Union lost, a group of Union supporters including himself questioned voters to determine who had changed their vote. Tr. 81:10-13. While everyone they talked to represented that they had voted "Yes," there were only seventeen ballots actually cast in favor of the Union. Tr. 81:10-13. Mr. Brashear testified that was "terrible" and said that he wanted "a picture for proof" so that "if we ended up losing this election like we did the last one, that everybody can't come in all 126 and say yes we voted for it." Tr. 81:10-82:4.

Further demonstrating the coercive and intimidating atmosphere is the statement of Union supporter James Olinger, who admitted under oath that on the day of the election, he openly claimed to others that he had pictures of 61 "Yes" votes on his personal cell phone. Tr. 76:17-19. Taken together, Mr. Olinger's statement that he had pictures of 61 yes votes on his phone, Mr. Brashear's admission that he and other employees planned to take pictures of their ballots to prove how they voted, and the fact that the union garnered 62 votes, strongly imply that Mr. Olinger was not merely joking and that Mr. Brashear sent the picture of his ballot to Mr. Olinger. Despite that, and regardless of whether or not his statement was true, Mr. Olinger's assertion in itself reflects the prospect of intimidation because where photos of votes are taken

(or even can be taken) and then are capable of being collected, voters could believe, by process of elimination, their vote would later be called into question by Mr. Olinger and others. Similarly, in such a situation and in such an atmosphere, individuals may have been intimidated to vote “Yes,” to refrain from voting, or to intentionally cast their ballot in such a way it would be voided. Moreover, even if Mr. Olinger did not have an actual list and pictures of 61 ballots on his cell phone, his statement is far too coincidental and is strong circumstantial evidence that there were, in fact, discussions of lists and employees taking pictures of ballots which went well beyond Mr. Brashear and Mr. Watts.

While the Union has tried to downplay the atmosphere and argue that the conduct at issue was limited, that argument fails. If voters are allowed to take pictures of their ballots, there is nothing to prevent unions, employers, or employees from coercing individuals to prove how they voted. This is exactly what Mr. Brashear envisioned when he and Mr. Watts, and likely others, decided before the election to photograph their ballots. Tr. 81:9-82:4. What’s more, the pressure and intimidation could be exerted on voters at any time—during the pre-election campaign, as individuals walk into the election, or even after the seven-day deadline to file objections to the election—thereby avoiding any chance that the election would be overturned. Further, and as the case was here, discovering such conduct would be extremely difficult and require an employee to actively come forward and report. Proof would likely be even harder to come by, especially in light of ever-changing technology, much of which is designed to keep information private, unattainable to unauthorized individuals, and non-recoverable after being deleted. The photographs could be shared via disappearing messages on Snapchat, posted to a private Facebook message board, or any number of other ways.

Indeed, these dangers distinguish why the present circumstances of employees taking photographs of their ballots is far worse than employees simply discussing their vote with others (with no physical proof), or employees marking their ballot to identify themselves (which can be conclusively discovered at the time of the election).² Not only does the mere act of taking a picture of a ballot destroy the secrecy of the ballot and the election, but in this case, there is clear and conclusive evidence that the reason the pictures were being taken was to create a coercive environment. The hearing testimony established that there was an atmosphere where pictures of ballots were being discussed by employees both before and after the election, and that if the Union had not received a majority vote and/or if the number of votes did not match the number of signed cards, employees would be questioned about their votes (as they were after the prior election) and would seek to prove who had, in fact, voted in favor of the Union through the pictures of ballots.

Likewise, the Union's "sky is falling" argument that no election would be upheld if they were set aside simply because voters took pictures of their ballots falls flat. Not only does the Union's stance contravene and offend the sanctity of the secret election, the solution is easy - require voters to check their cell phones before entering the voting booth. However, in this case, it is too late and the June 21 election is tainted and must be set aside. The undisputed evidence of (1) a pre-conceived scheme discussed among the employees to prove and expose how individuals voted, (2) the forensics confirmation that voters did in fact take photographs of ballots, and (3) the admission that an employee asserted to others to have at least 61 pictures of "Yes" votes, establishes that the election circumstances were such that voters could have been

² In their June 29, 2018 Petitioner's Motion for Dismissal of Employer's Objections, the Union argued that the instant "conduct is assessed as third party conduct under the *Milchem* Rule." The Union's attempt to liken this case to that of *Milchem* distorts reality. *Milchem* does not apply, and the undisputed evidence establishes that there was far more taking place here than just conversations with employees waiting to vote.

intimidated in casting their vote in a less than secret atmosphere. Because the evidence, at a minimum, raises doubts concerning the integrity and secrecy of the June 21 election, it must be set aside, and a new election held in which voters are not allowed to bring cell phones or other recording devices into the voting booth.

CONCLUSION

The June 21 election was irreparably tainted by the statements and actions of Union supporter employees who, variously: (i) testified that in a prior unsuccessful election they were surprised that their post-vote polling of employees did not match the actual vote count of that election, (ii) undisputedly took photos of their ballots in the present election for the purpose of proving how they had voted if they were asked after the election, and (iii) made comments about having photos of 61 yes votes on a personal phone after the polls closed but before the election results (ultimately of 62 yes votes) were announced. Taken together, the direct and circumstantial evidence presented in this case clearly establishes that the sanctity of the secret ballot was compromised.

The Regional Director's conclusion that there is no record evidence establishing that any employees engaged in objectionable voting conduct and that any picture-taking activity did not influence the results of the election (*see* Decision p. 4, n. 7) misses the mark. Even if that were the case, which it is not, this conclusion misses the mark because condoning employees' use of cell phone cameras to take photographs of their ballots, in and of itself, inherently prejudices and harms the secret ballot process. The harm and potential for abuse caused by allowing photographs of ballots ultimately does not depend on whether employees were actually or explicitly told to take photos of their ballots or whether an actual list of employees who took

pictures was maintained.³ The harm to the secret ballot process is complete upon allowing employees to shatter the secret, laboratory conditions of an election by taking photos of their ballots, whether to later prove how they voted if they are ever asked or for any other purpose.

As noted by the Regional Director, the enactment or implementation of any election rule banning cellphones and other recording devices within voting booths or within the voting area is solely within the Board's purview. If the precedent cited by EQT regarding the utmost importance of the secret ballot process does not mandate that the June 21 election be overturned, then technology has outpaced the available precedent, and the Board should take action to ensure that the laboratory conditions and integrity of the voting process can be maintained in an age where everyone has a camera in their pocket. Specifically, the Board should adopt an election rule banning cellphones and other recording devices within voting booths or within the voting area to maintain the integrity and required laboratory conditions of elections and to maintain the sanctity of the secret ballot process and it should retroactively apply that rule to the June 21 election based on the evidence of impropriety presented in this case.

Accordingly, for these reasons stated herein, as well as for the reasons presented at the July 18 Hearing and in the prior briefing on this matter, the Board should reject and overturn the Regional Director's Decision and Certification of Representative and the results of the June 21 election should be set aside and a new election should be held in which cell phones and other recording devices are not allowed in the voting booth, and thereby the eligible voters can decide, in an atmosphere free from improper conduct, whether they wish to be represented for purposes of collective bargaining.

³ EQT maintains its contention that the evidence proves that such conduct did in fact occur.

Dated: September 10, 2018

Respectfully submitted,

By: /s/ Matthew W. Stiles

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2018, I filed the foregoing using the Agency's website, thereby filing a copy of the same with the Regional Direction as well, and I served the foregoing on counsel for the Union by email:

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/s/ Matthew Stiles
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EXHIBIT A

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

Case No.: 09-RC-220731

**EQT PRODUCTION COMPANY
(Subsidiary of EQT Corporation)
Employer**

And

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC
Petitioner**

**Place: Pikeville, KY
Date: 07/18/18
Pages: 1-86
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<div>Page 1</div> <div>UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 9</div> <div>In the Matter of EQT PRODUCTION COMPANY (SUBSIDIARY OF EQT CORPORATION)</div> <div>Employer,</div> <div>and Case 09-RC-220731</div> <div>UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC Petitioner.</div> <div>The above-entitled matter came on for hearing pursuant to notice, before JONATHAN DUFFEY, Hearing Officer, at the Pike County Judicial Center, 175 Main Street, Appellate Courtroom, Pikeville, Kentucky, on Wednesday July 18th, 2018, at 9:00 a.m.</div>	<div>Page 3</div> <div>A P P E A R A N C E S</div> <div>Also present:</div> <div>Robert W. Frankhouser, Esq. EQT Corporation 625 Liberty Avenue, Suite 1700 Pittsburgh, Pennsylvania 15222 (412) 553-5774 rfrankhouser@eqt.com</div> <div>Matthew W. Stiles, Esq. Maynard Cooper & Gale 1901 Sixth Avenue North 2400 Regions Harbert Plaza Birmingham, Alabama 35203 mstiles@maynardcooper.com</div> <div>Billy Joe Wells, USW Organizer</div> <div>John Mitchell, USW Staff Representative</div>																																																		
<div>Page 2</div> <div>A P P E A R A N C E S</div> <div>On behalf of the Employer:</div> <div>Jordan Faykus, Esq. Baker McKenzie LLP 700 Louisiana, Suite 3000 Houston, Texas 77002 (713) 427-5050 jordan.faykus@bakermckenzie.com</div> <div>J. Richard Hammett, Esq. Baker McKenzie LLP 700 Louisiana, Suite 3000 Houston, Texas 77002 (713) 427-5050 jrichard.hammett@bakermckenzie.com</div> <div>On behalf of the Union:</div> <div>Brad Manzolillo, Esq. United Steel Workers Five Gateway Center Pittsburgh, Pennsylvania 15222 (412) 562-2529 bmanzolillo@usw.org</div>	<div>Page 4</div> <div>I N D E X</div> <table><tr><th>WITNESSES</th><th>DIRECT</th><th>CROSS</th><th>REDIRECT</th><th>RECROSS</th></tr><tr><td>Chris Bailey</td><td>14</td><td>23</td><td>--</td><td>--</td></tr><tr><td>David Rhodes</td><td>26</td><td>30</td><td>31</td><td>32</td></tr><tr><td>Travis Cooke</td><td>34</td><td>40</td><td>--</td><td>--</td></tr><tr><td>Kevin Andrews</td><td>41</td><td>51</td><td>--</td><td>--</td></tr><tr><td>Rick Taylor</td><td>53</td><td>--</td><td>--</td><td>--</td></tr><tr><td>James Maynard</td><td>57</td><td>61</td><td>--</td><td>--</td></tr><tr><td>Jason Stewart</td><td>63</td><td>69</td><td>73</td><td>--</td></tr><tr><td>James Olinger</td><td>74</td><td>77</td><td>77</td><td>78</td></tr><tr><td>Randall Brashear</td><td>79</td><td>--</td><td>--</td><td>--</td></tr></table>	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	Chris Bailey	14	23	--	--	David Rhodes	26	30	31	32	Travis Cooke	34	40	--	--	Kevin Andrews	41	51	--	--	Rick Taylor	53	--	--	--	James Maynard	57	61	--	--	Jason Stewart	63	69	73	--	James Olinger	74	77	77	78	Randall Brashear	79	--	--	--
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<p style="text-align: right;">Page 5</p> <p>1 EXHIBITS</p> <p>2 EXHIBIT FOR IDENTIFICATION IN EVIDENCE</p> <p>3 BOARD</p> <p>4 1(a-i) 13 13</p> <p>5</p> <p>6 EMPLOYER</p> <p>7 EQT-1 50 50</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 prepare and file with the Regional Director his report</p> <p>2 and recommendations in this proceeding. And will cause a</p> <p>3 copy thereof to be served upon each of the parties. The</p> <p>4 procedures to be followed from that point forward are set</p> <p>5 forth in section 102.69, rules and regulations.</p> <p>6 Will counsel and other representatives for</p> <p>7 the parties please state their appearances for the</p> <p>8 record. For the employer.</p> <p>9 MR. HAMMETT: Rick Hammett, Baker McKenzie,</p> <p>10 representing the Employer.</p> <p>11 MR. FAYKUS: Jordan Faykus, Baker McKenzie,</p> <p>12 representing the Employer, EQT.</p> <p>13 HEARING OFFICER DUFFEY: Sir, do you want to</p> <p>14 state a notice of appearance?</p> <p>15 MR. STILES: Yes. Matt Stiles. I'm here for</p> <p>16 Diversified Gas and Oil.</p> <p>17 HEARING OFFICER DUFFEY: And for the Union.</p> <p>18 MR. MANZOLILLO: Brad Manzolillo, I'm USW</p> <p>19 Organizing Counsel.</p> <p>20 MR. WELLS: Billy Joe Wells. Here for the</p> <p>21 organizing.</p> <p>22 MR. MITCHELL: John Mitchell, casual staff</p> <p>23 representative for the United Steel Workers.</p> <p>24 HEARING OFFICER DUFFEY: Okay. All right.</p> <p>25 Before we begin, are there any motions?</p>
<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 (Time noted 9:01 a.m.)</p> <p>3 HEARING OFFICER DUFFEY: All right. The</p> <p>4 hearing will be in order. This is a hearing before the</p> <p>5 National Labor Relations Board in the matter of case</p> <p>6 09-RC-220731, pursuant to the order of the Regional</p> <p>7 Director, dated June 29, 2018.</p> <p>8 The hearing officer conducting this hearing</p> <p>9 is Jonathan Duffey. The official reporter makes the only</p> <p>10 official transcript of these proceedings, and all</p> <p>11 citations and brief and arguments must refer to the</p> <p>12 official record. In the event that any of the parties</p> <p>13 wishes to make off-the-record remarks, requests made for</p> <p>14 such remarks should be directed to the hearing officer</p> <p>15 and not to the official reporter. Statements of reasons</p> <p>16 in support of motions and objections should be specific</p> <p>17 and concise, exceptions automatically follow all adverse</p> <p>18 rulings.</p> <p>19 Objections and exceptions may, upon</p> <p>20 appropriate request, be permitted to an entire line of</p> <p>21 questioning. It appears from the Regional Director's</p> <p>22 order, dated June 29, 2018, that this hearing is held for</p> <p>23 the purpose of taking evidence concerning Employer's</p> <p>24 objections 1, 2, and 3.</p> <p>25 In due course the hearing officer will</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. HAMMETT: The Employer would move to</p> <p>2 sequester the witnesses.</p> <p>3 HEARING OFFICER DUFFEY: Okay. I'm going to</p> <p>4 grant that motion. I have granted a request to sequester</p> <p>5 witnesses. This means that all persons who are going to</p> <p>6 testify in this proceeding, with specific exceptions, may</p> <p>7 only be present in the hearing room when they are giving</p> <p>8 testimony. Each party may select one person to remain in</p> <p>9 the room and assist it in the presentation of its case.</p> <p>10 They may remain in the hearing room even if they're going</p> <p>11 to testify or have testified.</p> <p>12 The order also means that from this point on,</p> <p>13 until the hearing is finally closed, no witness may</p> <p>14 discuss with other potential witnesses either the</p> <p>15 testimony that they have given or that they intend to</p> <p>16 give. The best way to avoid any problems is simply not</p> <p>17 discuss the case with any other potential witnesses until</p> <p>18 after the hearing is complete.</p> <p>19 Under the rule as applied by the board, with</p> <p>20 one exception, counsel for a party may not in any manner,</p> <p>21 including by showing a transcript of testimony, inform a</p> <p>22 witness about the contents of the testimony given by a</p> <p>23 preceding witness without express permission of the</p> <p>24 hearing officer. However, counsel for a party may inform</p> <p>25 counsel's own witness of the content of testimony and may</p>

<p style="text-align: right;">Page 9</p> <p>1 show to a witness transcripts of testimony given by a 2 witness for the opposing side in order to prepare for a 3 rebuttal of such testimony. 4 I expect counsel to police the sequestration 5 order and to bring any violation of it to my attention 6 immediately. Also it is the obligation of counsel to 7 inform potential witnesses of their obligations under the 8 order. It is also recommended that, as witnesses leave 9 the witness stand upon completion of their testimony, 10 they be reminded that they are not to discuss the 11 testimony with any other witness until the hearing is 12 completed. 13 Okay. At this point, I'm going to give the 14 parties the opportunity to identify the issues for 15 hearing and their positions on each issue. For the 16 Employer. 17 MR. HAMMETT: Yes. I'll stand just to say a 18 few things about the issues here, and they're outlined in 19 the objections. But really the primary issue here that 20 we're dealing with is the fact that employees, when they 21 were voting, took pictures of their ballots on their cell 22 phones for the purpose of being able to show how they 23 voted. And that in and of itself is inherently wrong and 24 violates the secret ballot aspects of the election. And 25 creates an environment that is ripe for coercion and</p>	<p style="text-align: right;">Page 11</p> <p>1 sanctity of the election itself. 2 So that's really at heart of what's at issue 3 here, whatever the reason is that pictures are taken of 4 those ballots. 5 HEARING OFFICER DUFFEY: Okay. Thank you. 6 And for the Union, will you care to identify your 7 position on the objections at issue? 8 MR. MANZOLILLO: Yes, your Honor. I think we 9 can summarize the objections into three categories. One, 10 the allegation that the employees were instructed -- by 11 who, we don't know -- to take pictures of their ballots. 12 And two -- to share them with their coworkers. And 13 three, that at least one employee kept a list. The 14 allegation is that the -- of the employees as they voted. 15 So in other words that something would be objectionable 16 if the list -- if employees were aware that a list of who 17 voted was being kept by the Board's NRB list. And 18 there's some allegations of threatening or intimidating 19 statements, pressuring people to take pictures were made. 20 The evidence will show that none of this 21 happened. There may have been a handful of people that 22 took pictures of their ballots. There is nothing in the 23 rules that preclude that. And in fact, if such a rule 24 were to be implemented, it would allow any employee to 25 get an election overturned simply by saying they're going</p>
<p style="text-align: right;">Page 10</p> <p>1 corruption. If employees can take pictures of their 2 ballots for whatever reason, and employers and unions 3 know about that, then they can simply tell employees that 4 they have to take pictures of their ballots so that they 5 can demonstrate that they voted the way they said they 6 would vote, sign their union card the way they said they 7 would vote at a union meeting, or for whatever reason. 8 It's really an extension and even worse than 9 some of the cases that go back where either the union or 10 the employer would tell somebody to put a little symbol 11 on their ballot when they would vote so that when the 12 ballots were counted, either the union or the employer 13 would know which way they voted. This is much worse than 14 that, because you can actually say if you allow pictures 15 to be taken of your ballot, then you can require them to 16 prove the way that they voted. And the Union in its -- 17 in its motion to dismiss was arguing that it really is no 18 different than someone just telling somebody how they 19 voted. It is much, much different, because someone can 20 lie when somebody asked them how they vote. And they can 21 say, "I voted 'Yes,'" or they can say, "I voted 'No.'" 22 But how they actually voted remains a secret. 23 If you allow people to take pictures, it's no 24 longer a secret. And it will be a weapon that's used 25 going forward in a way that completely disrupts the</p>	<p style="text-align: right;">Page 12</p> <p>1 to take a picture of a ballot. They may not like -- they 2 may know they're going to lose an election badly, so 3 they're going to take a picture of a ballot. And if 4 counsel for the employers' argument were to be upheld, it 5 would make it virtually impossible to have any election 6 that wouldn't be overturned. 7 And the evidence will make clear that no list 8 was kept, that pictures were not disseminated or kept in 9 a list. Again, there may have been a handful of people 10 that took pictures of their ballots, but that was not 11 used in any of the manners that the employer alleges. 12 And these objections should be dismissed in their 13 entirety. 14 HEARING OFFICER DUFFEY: Okay. Thank you. I 15 can't recall -- we read the sequestration order. Let, me 16 just give the burden the opportunity to identify by name 17 if they're choosing to have a non-attorney representative 18 stay in the room. We can just identify that person at 19 this time and their title. 20 MR. HAMMETT: Yes. The employer has Maverick 21 Bentley in the room. And he is -- I don't know your 22 exact title. What is it, Maverick? 23 MR. MAVERICK: Senior Director of Operations. 24 HEARING OFFICER DUFFEY: Okay. Thank you. 25 MR. HAMMETT: He may also be a witness in the</p>

<p style="text-align: right;">Page 13</p> <p>1 case, or he may not be.</p> <p>2 HEARING OFFICER DUFFEY: Okay. That's fine.</p> <p>3 And for the Union, can you identify your representatives?</p> <p>4 MR. MANZOLILLO: Yes. Mr. Billy J. Wells is</p> <p>5 a employee of EQT. And he will serve as our witness --</p> <p>6 serve as our representative. He may or may not be a</p> <p>7 witness. I also have John Mitchell, who was involved in</p> <p>8 the campaign. He is not going to be a witness for the</p> <p>9 Union.</p> <p>10 HEARING OFFICER DUFFEY: Okay.</p> <p>11 MR. MANZOLILLO: He's a staff representative</p> <p>12 and employed by the steel workers.</p> <p>13 HEARING OFFICER DUFFEY: Okay. Since the</p> <p>14 Employer is the party filed the motions in this case, you</p> <p>15 may call your first witness.</p> <p>16 MR. HAMMETT: Okay. We're going to call</p> <p>17 Chris Bailey to the stand. I'm going to stand up here.</p> <p>18 HEARING OFFICER DUFFEY: Madam Court</p> <p>19 Reporter, have you received the formal papers? Okay. At</p> <p>20 this point I'm going to move to offer the formal papers</p> <p>21 for an exhibit, 0-1A through I. Is there any objection</p> <p>22 to my receiving the formal papers?</p> <p>23 MR. HAMMETT: No objection.</p> <p>24 MR. MANZOLILLO: No objection.</p> <p>25 HEARING OFFICER DUFFEY: Okay. They are</p>	<p style="text-align: right;">Page 15</p> <p>1 thirty well operators in the Pikeville operating area.</p> <p>2 Q. And who do you report to?</p> <p>3 A. Darrell Smith.</p> <p>4 Q. You report up to Darrell Smith?</p> <p>5 A. Yes. I report to Darrell Smith.</p> <p>6 Q. Who does Darrell Smith report to?</p> <p>7 A. Darrell Smith reports to Maverick Bentley.</p> <p>8 Q. Okay. And Maverick Bentley is the senior</p> <p>9 director of operations?</p> <p>10 A. Correct.</p> <p>11 Q. Do you -- let me go back to the day of the</p> <p>12 union election. Do you remember when that was?</p> <p>13 A. It was on the 21st of June.</p> <p>14 Q. 21st of June? And on that day there were</p> <p>15 safety meetings; is that right?</p> <p>16 A. Yes. There were two scheduled safety</p> <p>17 meetings.</p> <p>18 Q. Okay. And when were they scheduled?</p> <p>19 A. The morning session -- I don't recall the</p> <p>20 time because I was in the afternoon session. It started</p> <p>21 about 9:00 in the morning or 10:00, on the first meeting.</p> <p>22 And then second meeting was originally scheduled for</p> <p>23 1:00, and the safety department decided to change the</p> <p>24 meeting to 2:00.</p> <p>25 Q. And why was that?</p>
<p style="text-align: right;">Page 14</p> <p>1 received.</p> <p>2 CHRIS BAILEY was thereupon called as a</p> <p>3 witness and, after having been first duly sworn,</p> <p>4 testified as follows:</p> <p>5 HEARING OFFICER DUFFEY: And would you please</p> <p>6 state your full name for the record.</p> <p>7 THE WITNESS: Christopher Bailey.</p> <p>8 HEARING OFFICER DUFFEY: How do you spell</p> <p>9 Bailey?</p> <p>10 THE WITNESS: B-a-i-l-e-y.</p> <p>11 HEARING OFFICER DUFFEY: Okay. Thank you.</p> <p>12 You may proceed.</p> <p>13 DIRECT EXAMINATION</p> <p>14 BY MR. HAMMETT:</p> <p>15 Q. Okay. Thank you, Chris. You work for EQT;</p> <p>16 is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. At least for today?</p> <p>19 A. For the remainder of the day, yes.</p> <p>20 Q. What is your position at EQT?</p> <p>21 A. I'm a production superintendent.</p> <p>22 Q. Tell us a little bit -- what are you a</p> <p>23 superintendant of?</p> <p>24 A. I actually have three assistant</p> <p>25 superintendents that work under me. And approximately</p>	<p style="text-align: right;">Page 16</p> <p>1 A. To keep from interfering with any remaining</p> <p>2 guys or employees that were going to go vote.</p> <p>3 Q. And the election ended at 1:30; is that</p> <p>4 right?</p> <p>5 A. To my understanding, yes. That's correct.</p> <p>6 Q. Were you at the election site at any point?</p> <p>7 A. No, sir.</p> <p>8 Q. And where was the safety meeting?</p> <p>9 A. The safety meeting was actually held at the</p> <p>10 Bob Amos Park. There's a track that the local high</p> <p>11 school uses, and they have a community center there. And</p> <p>12 it was held there.</p> <p>13 Q. And do you know an employee named Jimmy</p> <p>14 Olinger?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Who is Jimmy Olinger?</p> <p>17 A. Jimmy Olinger is pipeline operator out of the</p> <p>18 Hazard group.</p> <p>19 Q. Now, when you say "out of Hazard" versus --</p> <p>20 where else would someone be out of?</p> <p>21 A. Well, we basically split the district</p> <p>22 geographically in two areas, the Pikeville group and then</p> <p>23 the Hazard operating area. So when someone refers to</p> <p>24 Pikeville, they obviously work out of the</p> <p>25 Pikeville-headquartered building. Or if they work out of</p>

4 (Pages 13 to 16)

1 Hazard, they would work out of the Hazard regional
 2 building in Hazard.
 3 Q. And those buildings are just reporting
 4 buildings?
 5 A. Reporting. And the Pikeville office is the
 6 Kentucky Regional headquarters.
 7 Q. Is also the regional headquarters?
 8 A. Yes, sir.
 9 Q. The Hazard office is --
 10 A. It's a field office.
 11 Q. It's just a field office?
 12 A. Yes.
 13 Q. Okay. So Jimmy Olinger works out of the
 14 Hazard field office?
 15 A. Yes, sir.
 16 Q. And on the day of the election, did you have
 17 a conversation with Jimmy Olinger?
 18 A. Yes. I did.
 19 Q. Where were you when you had that
 20 conversation?
 21 A. I was standing at the -- near the door at the
 22 entrance to the community center, going into the
 23 community center. It's just a block building, one-story.
 24 I was standing just near the entrance there at the
 25 community center.

1 Q. How did the conversation start?
 2 A. I actually engaged the conversation. Jimmy
 3 came up just like any other day and asked me how things
 4 were going. And I think I alluded to the fact or asked
 5 him something to the notion of, "How do you think things
 6 went?" Or "How do you think things were going?"
 7 Referring to the union vote.
 8 Q. You asked that question?
 9 A. Yeah. I asked Jimmy.
 10 Q. And what did Jimmy say?
 11 A. He said -- Jimmy replied, "It's going good."
 12 He said, "I've got pictures of sixty-one 'Yes' votes."
 13 Q. He told you that?
 14 A. Yes.
 15 Q. Did he just say that? Did he show you his
 16 phone? Did he --
 17 A. He actually, when he made that comment, he
 18 reached into his left pocket, and he said, "I've got
 19 pictures on my personal cell phone of sixty-one 'Yes'
 20 votes."
 21 Q. And so let's go into kind of exactly where
 22 you were --
 23 A. Okay.
 24 Q. -- at that point. Pick a place. Say that
 25 window over is the door into the community center.

1 A. Uh-huh.
 2 Q. Where would you have been?
 3 A. I would've --
 4 HEARING OFFICER DUFFEY: Wait a minute.
 5 "Window" is not going to come through on the transcript.
 6 Say feet or --
 7 MR. HAMMETT: Okay. So in relation to the
 8 door of the community center, where were you standing?
 9 We'll do it that way.
 10 A. Probably maybe one to two feet to the right
 11 of the door.
 12 Q. To the right of the door as you face it?
 13 A. Yes. As I face the door. Correct.
 14 Q. So okay. And where was Jimmy?
 15 A. Jimmy would've been to my right.
 16 Q. To your right? Okay. And did you stop and
 17 have a conversation with him? Or was he just going by?
 18 A. Yeah. We stopped and had a conversation.
 19 Q. How long did the conversation last?
 20 A. A couple of two or three minutes. It wasn't
 21 a really long conversation.
 22 Q. And then you went on into the safety meeting,
 23 I assume?
 24 A. Yeah. Actually Jordan Pigman, our safety
 25 director -- they started the meeting early. A couple of

1 minutes early, maybe five, ten minutes at the most early.
 2 So he actually came out and said, "We're going to go
 3 ahead and get started." So the guys started going on
 4 into the meeting room.
 5 And then after Jimmy and I had our
 6 conversation, I stepped back outside, just kind of
 7 looking around to see, you know, "Hey, anybody else need
 8 to go into the meeting? They're getting ready to start a
 9 little bit early." And I went to talk to Darrell Smith,
 10 which was my supervisor. He was standing outside.
 11 Q. Do you remember what -- approximately what
 12 time it was when you had this conversation?
 13 A. Well, I do remember when Jordan started the
 14 safety meeting, I got my phone out and looked, and it was
 15 approximately ten minutes until 2:00. So 1:50ish.
 16 Q. When the meeting started?
 17 A. When -- actually, Georgie Pritt, our other
 18 safety personnel out of the Charleston office -- she was
 19 the one that was leading off, but Jordan was kind of
 20 getting everybody in to get it started. And like I said,
 21 I got my phone out of my pocket, as I normally do, when I
 22 went back in and sat down. And I looked at my phone, and
 23 it was maybe 1:00 -- no later than 1:55.
 24 Q. At that time?
 25 A. At that time. Yes.

1 Q. When you went back in?
 2 A. When I went back in. Yes.
 3 Q. So -- and tell me if I had this right. You
 4 had a conversation?
 5 A. Uh-huh.
 6 Q. You went in, but then you came back out. And
 7 you were looking to see if --
 8 A. Well, I was standing at the door.
 9 Q. You just stayed outside?
 10 A. Yeah. I stayed outside. Yes. Jimmy. And
 11 there was a couple of other employees when Jimmy came up,
 12 they went on in and sat down. And I went back out. And
 13 when I was talking to Darrell Smith is when Darrell
 14 mentioned to me that the vote had been counted. And he
 15 actually showed me a text message from Maverick with the
 16 tally on it.
 17 Q. Was that when you were in the meeting?
 18 A. No. I was not in the meeting. I stepped
 19 back out.
 20 Q. When you stepped back out?
 21 A. Yeah. Uh-huh. And that's when I went back
 22 into the meeting to actually participate in the safety
 23 meeting.
 24 Q. Okay. So at some point did you talk with
 25 Maverick Bentley about your conversation with Jimmy

1 Olinger?
 2 A. Yes. I talked to Maverick after the fact. I
 3 didn't call Maverick and tell him about the conversation.
 4 I actually had a conversation with Jimmy's supervisor.
 5 Q. And who was that?
 6 A. Nick Combs.
 7 Q. And you told Nick Combs about the --
 8 A. Yes. I told Nick Combs about the -- and I
 9 wasn't calling Nick to say, "Hey, Jimmy said that --", it
 10 just came about in our discussion.
 11 Q. Just in an ordinary conversation?
 12 A. Yeah. Just in a general conversation. Yes.
 13 Q. But at some point you called Maverick. Did
 14 Maverick call you? Or did you call Maverick?
 15 A. Honestly, I think Maverick called me.
 16 Q. And was it your understanding that day that
 17 someone had told Maverick about the conversation?
 18 A. Someone. Yes.
 19 Q. But at some point you talked with Maverick?
 20 A. Yeah. Yeah. We talked about it.
 21 Q. And told him what you testified to here about
 22 the conversation?
 23 A. Correct. Yes.
 24 Q. Do you remember when you had that
 25 conversation with Jimmy Olinger -- do you remember if

1 there were any other people around you or could've heard
 2 that conversation?
 3 A. When Jimmy first came up and we just started
 4 chatting, there was a couple of employees with him, but
 5 they did walk off. I think Bobby Whitaker was one of
 6 them. And I think maybe Bert Kitt, I'm not one hundred
 7 percent sure. But they did walk off. And it was just
 8 Jimmy and I talking face to face. I didn't hear anybody
 9 else -- or I didn't know that anybody else had overheard
 10 it until later.
 11 Q. So you wouldn't have necessarily noticed
 12 anybody else present?
 13 A. No. No.
 14 Q. Okay.
 15 MR. HAMMETT: No further questions at this
 16 time. I'll pass the witness.
 17 HEARING OFFICER DUFFEY: Any
 18 cross-examination?
 19 MR. MANZOLILLO: If I could have just one
 20 second.
 21 HEARING OFFICER DUFFEY: Okay.
 22 CROSS-EXAMINATION
 23 BY MR. MANZOLILLO:
 24 Q. Okay. I think I have just a few questions.
 25 Mr. Bailey, my name is Brad Manzolillo. I'm an attorney

1 for the United Steel Workers. You said the meeting
 2 started shortly before 2:00, the safety meeting?
 3 A. Yes. That's correct.
 4 Q. And you talked to Mr. Olinger a couple of
 5 minutes before you went into the safety meeting?
 6 A. That's correct. Yes.
 7 Q. And when did you talk to Mr. Smith?
 8 A. It would've been after I had the conversation
 9 with Jimmy. I walked back -- I walked out of where Jimmy
 10 and I was at, back outside, and had a conversation with
 11 him. Are you asking me approximately what time?
 12 Q. Yeah.
 13 A. Gosh, it was right about the same time the
 14 meeting was starting, so ten minutes to 2:00.
 15 Q. So somewhere -- in your recollection,
 16 somewhere between 1:50 and 1:55, when the meeting
 17 started?
 18 A. Yes.
 19 Q. And you had your conversations with
 20 Mr. Olinger and Mr. Smith in, say, the five minutes
 21 preceding that?
 22 A. Could you ask that again?
 23 Q. Would it be fair to say that your
 24 conversations with Mr. Olinger and Mr. Smith occurred
 25 between, say, 1:40 and the time the meeting started?

<p style="text-align: right;">Page 25</p> <p>1 A. That's correct. Yes.</p> <p>2 Q. Okay. And about how much time difference was</p> <p>3 there between your conversations with Mr. Olinger and</p> <p>4 Mr. Smith? About two minutes? One minute?</p> <p>5 A. Yeah. It was almost immediately.</p> <p>6 Q. And Mr. Smith told you that the votes had</p> <p>7 already been counted at that point?</p> <p>8 A. Yes. I walked over to him, and he told me.</p> <p>9 Yes.</p> <p>10 MR. MR. MANZOLILLO: I have no further</p> <p>11 questions.</p> <p>12 HEARING OFFICER DUFFEY: Any redirect?</p> <p>13 MR. HAMMETT: No.</p> <p>14 HEARING OFFICER DUFFEY: Okay. Mr. Bailey,</p> <p>15 thank you for your testimony. You're excused. Please do</p> <p>16 not discuss your testimony with any other potential</p> <p>17 witness.</p> <p>18 THE WITNESS: Okay. Thank you.</p> <p>19 HEARING OFFICER DUFFEY: You may call your</p> <p>20 next witness. State your full name.</p> <p>21 THE WITNESS: David Rhodes.</p> <p>22 HEARING OFFICER DUFFEY: Will you raise your</p> <p>23 right hand.</p> <p>24 DAVID RHODES was thereupon called as a</p> <p>25 witness and, after having been first duly sworn,</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. And. Sir, you're aware that there was on</p> <p>2 election that took place on Thursday June, 21st?</p> <p>3 A. Yes.</p> <p>4 Q. And that election was scheduled to take place</p> <p>5 at 11:30 and ending at 1:30?</p> <p>6 A. Yes. The reason it was, it was changed to</p> <p>7 2:00.</p> <p>8 Q. Election?</p> <p>9 A. I'm sorry.</p> <p>10 Q. No. No. You're fine. The election was what</p> <p>11 I was asking.</p> <p>12 A. Yes.</p> <p>13 Q. Was scheduled to take place at 11:30 to 1:30;</p> <p>14 is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Did you work that day?</p> <p>17 A. Yes. I did.</p> <p>18 Q. What location did you work at?</p> <p>19 A. That day I was at the Bob Amos Park where</p> <p>20 they had their safety meeting scheduled.</p> <p>21 Q. Bob Amos Park?</p> <p>22 A. Yes.</p> <p>23 Q. And you said there was a safety meeting?</p> <p>24 A. Yes.</p> <p>25 Q. What time did that safety meeting take place?</p>
<p style="text-align: right;">Page 26</p> <p>1 testified as follows:</p> <p>2 HEARING OFFICER DUFFEY: Okay. Please have a</p> <p>3 seat.</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. FAYKUS:</p> <p>6 Q. Hi. Good morning, Mr. Rhodes. Sir, you're</p> <p>7 an employee of EQT?</p> <p>8 A. Yes. That's correct.</p> <p>9 Q. All right. And what's your job at EQT?</p> <p>10 A. I'm assistant superintendant of production.</p> <p>11 Q. Assistant superintendant of production? How</p> <p>12 long have you been with EQT?</p> <p>13 A. About ten years.</p> <p>14 Q. In your job, can you briefly describe your</p> <p>15 job duties.</p> <p>16 A. Day-to-day basis I usually make sure my</p> <p>17 direct reports show up for work, are in their area on</p> <p>18 time. And if they have any issues throughout the day,</p> <p>19 they can contact me. I try to troubleshoot it or</p> <p>20 whatever I can to help them.</p> <p>21 Q. And you say your direct reports --</p> <p>22 approximately how many do you have?</p> <p>23 A. Approximately nine. One in SUV [phonetic].</p> <p>24 Q. So nine plus one?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. 2:00.</p> <p>2 Q. And did you attend that safety meeting?</p> <p>3 A. Yes. I did.</p> <p>4 Q. Mr. Rhodes, do you know a Jimmy Olinger?</p> <p>5 A. Yes. I do.</p> <p>6 Q. Who is Mr. Olinger?</p> <p>7 A. He works for EQT on the pipeline.</p> <p>8 Q. Did you see Mr. Olinger on Thursday, June</p> <p>9 21st?</p> <p>10 A. Yes. I did.</p> <p>11 Q. Where did you see him?</p> <p>12 A. At the safety meeting.</p> <p>13 Q. And at the safety meeting itself, whereabouts</p> <p>14 did you see him?</p> <p>15 A. Outside the door before entering the</p> <p>16 building.</p> <p>17 Q. Okay. Do you recall any comments Mr. Olinger</p> <p>18 made about the election on that day?</p> <p>19 A. Yes. When he arrived up there I was kind of</p> <p>20 standing right of the door entry to the building, and he</p> <p>21 come around to my left. And he looked towards Chris</p> <p>22 Bailey and directly with his phone said, "I have</p> <p>23 sixty-one 'Yes' votes."</p> <p>24 Q. So you said that you were there at the door.</p> <p>25 Were you inside the door or outside the door?</p>

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 A. Outside.</p> <p>2 Q. Outside the door? And you said that Mr.</p> <p>3 Olinger came up and he was having a discussion with Chris</p> <p>4 Bailey?</p> <p>5 A. Yes. He was directing that towards Chris</p> <p>6 Bailey.</p> <p>7 Q. Was there anyone else around at that time?</p> <p>8 A. There was some other people there that came</p> <p>9 in before the safety meeting started, three or four I'm</p> <p>10 aware of.</p> <p>11 Q. Who was it?</p> <p>12 A. Bobby Whitaker, Jimmy Olinger, Chris Bailey.</p> <p>13 And I was trying to remember who else the other one was.</p> <p>14 There was one more. I can't remember his name.</p> <p>15 Q. So after Mr. Olinger made that comment, what</p> <p>16 happened next?</p> <p>17 A. Just a few maybe a minute after that Jordan</p> <p>18 Pigman, the safety coordinator, stuck his head outside</p> <p>19 the door telling everybody to come on in, they was going</p> <p>20 to go ahead and start the safety meeting.</p> <p>21 Q. Okay. And do you recall about what time that</p> <p>22 was?</p> <p>23 A. That was approximately ten till 2:00.</p> <p>24 Q. So at that point, did you go in the safety</p> <p>25 meeting?</p>	<p style="text-align: right;">Page 31</p> <p>1 Manzollilo, attorney with the steel workers. Just a</p> <p>2 couple of questions for you.</p> <p>3 A. Okay.</p> <p>4 Q. So you said this meeting, the safety meeting,</p> <p>5 started at 2:00?</p> <p>6 A. Yes. It was scheduled for 2:00.</p> <p>7 Q. Scheduled for 2:00? And the conversation</p> <p>8 with Mr. Olinger and Mr. Bailey was just a few minutes</p> <p>9 before the safety meeting?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 MR. MANZOLILLO: I have no other questions.</p> <p>13 HEARING OFFICER DUFFEY: Any redirect on</p> <p>14 that?</p> <p>15 MR. FAYKUS: I believe so.</p> <p>16 HEARING OFFICER DUFFEY: Okay.</p> <p>17 REDIRECT EXAMINATION</p> <p>18 BY MR. FAYKUS:</p> <p>19 Q. So Mr. Rhodes, you just said that the safety</p> <p>20 meeting was scheduled to start at 2:00 originally. Did</p> <p>21 it actually start at that time?</p> <p>22 A. No.</p> <p>23 Q. What time did it start?</p> <p>24 A. Probably 1:50.</p> <p>25 Q. And why was that?</p>
<p style="text-align: right;">Page 30</p> <p>1 A. No. I stayed outside.</p> <p>2 Q. And was there anyone else outside there with</p> <p>3 you?</p> <p>4 A. Yes. Chris Bailey. We attended the earlier</p> <p>5 safety meeting, so we just stayed outside for this second</p> <p>6 meeting that started at 2:00.</p> <p>7 Q. And besides you and Chris, was there anyone</p> <p>8 else?</p> <p>9 A. I don't think so.</p> <p>10 Q. Okay.</p> <p>11 HEARING OFFICER DUFFEY: Let me ask you a</p> <p>12 question real quick. You mentioned there were three to</p> <p>13 four others in the area prior to the safety meeting. And</p> <p>14 you mentioned a Mr. Whitaker, who is he?</p> <p>15 THE WITNESS: He's also a pipeline operator.</p> <p>16 HEARING OFFICER DUFFEY: He's an operator?</p> <p>17 Okay. Thank you.</p> <p>18 MR. FAYKUS: I believe that's all I have.</p> <p>19 HEARING OFFICER DUFFEY: Okay. Any</p> <p>20 cross-examination?</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. MANZOLILLO:</p> <p>23 Q. Yes. I'm sorry. I didn't catch your name.</p> <p>24 A. David Rhodes.</p> <p>25 Q. Rhodes? Okay. Hi, Mr. Rhodes. I'm Brad</p>	<p style="text-align: right;">Page 32</p> <p>1 A. They just wanted to go ahead -- I guess the</p> <p>2 safety coordinator stuck his head outside the door and</p> <p>3 told them if everybody was here, he'd go ahead and get</p> <p>4 started. So they started early.</p> <p>5 Q. You say the safety coordinator? Who is that?</p> <p>6 A. Jordan Pigman.</p> <p>7 Q. So at some point, Mr. Pigman stuck his head</p> <p>8 out, as you said, and asked to start the meeting early?</p> <p>9 A. Yes.</p> <p>10 Q. And that was approximately at ten minutes or</p> <p>11 so before?</p> <p>12 A. Yes.</p> <p>13 Q. In relation to the comments that you</p> <p>14 overheard by Mr. Olinger, was that before or after?</p> <p>15 A. Before.</p> <p>16 Q. So just to correct me if I'm wrong here, but</p> <p>17 Mr. Olinger -- you overheard Mr. Olinger's comments then</p> <p>18 thereafter, Mr. Pigman comes out and says, "We want to</p> <p>19 get the safety meeting started." And the safety meeting</p> <p>20 actually started at about approximately 1:50?</p> <p>21 A. That's correct.</p> <p>22 MR. FAYKUS: That's all I have.</p> <p>23 HEARING OFFICER DUFFEY: Recross?</p> <p>24 RECROSS-EXAMINATION</p> <p>25 BY MR. MANZOLILLO:</p>

1 Q. Yes. Just one second. Mr. Rhodes, during
 2 the meeting, did employees learn that the election --
 3 what the vote count was? At some point during the
 4 meeting did it become discussed?
 5 A. I'm not sure of that.
 6 Q. Okay. So when did you learn what the vote
 7 count was?
 8 A. Darrell Smith came outside and told us that
 9 the election had been won.
 10 Q. And that was -- when was that relative to the
 11 meeting?
 12 A. That was approximately fifteen, twenty
 13 minutes into the safety meeting.
 14 Q. So around 2:00 or so?
 15 A. Probably a little after 2:00.
 16 Q. And once again, to your recollection, the
 17 meeting started a few minutes early?
 18 A. Yes.
 19 Q. And you had overheard a conversation with
 20 Mr. Olinger and Mr. Bailey a few minutes before that?
 21 A. Yes.
 22 MR. MANZOLILLO: I have no further questions.
 23 HEARING OFFICER DUFFEY: Redirect?
 24 MR. FAYKUS: No.
 25 HEARING OFFICER DUFFEY: Okay. Mr. Rhodes,

1 please do not discuss your testimony with any other
 2 potential witnesses. Thank you.
 3 (A discussion was held off the record.)
 4 TRAVIS COOKE was thereupon called as a
 5 witness and, after having been first duly sworn,
 6 testified as follows:
 7 HEARING OFFICER DUFFEY: All right. Please
 8 have a seat.
 9 DIRECT EXAMINATION
 10 BY MR. HAMMETT:
 11 Q. Travis, you work for EQT; is that right?
 12 A. Yes.
 13 Q. How long have you worked for EQT?
 14 A. Almost fourteen years.
 15 Q. What is your current position?
 16 A. Lead assistant superintendent.
 17 Q. What office are you in?
 18 A. Hazard office in Hazard, Kentucky.
 19 Q. Do you know Billy Joe wells?
 20 A. Yes.
 21 Q. He's here in the room now; correct?
 22 A. Yes.
 23 Q. I'm going to go back to the day of the union
 24 election -- or to the time of the union election. Let me
 25 say it that way. You remember that was on Thursday, June

1 21st; correct?
 2 A. Yes.
 3 Q. And direct your attention to the next day,
 4 the next morning, I think in the Hazard office. Did you
 5 have a conversation or did you overhear comments by
 6 Mr. Wells with respect to the election?
 7 A. Yes.
 8 Q. What were those comments?
 9 A. We were -- several people were in the office,
 10 and we were talking about the ballot that was thrown away
 11 due to being marked outside of the lines.
 12 Q. You're referring to the voided ballot?
 13 A. The voided ballot. Yes.
 14 Q. What was said in that general conversation
 15 that included Billy Joe? It wasn't just Billy Joe;
 16 right?
 17 A. No. It was several other people in the
 18 office.
 19 Q. Do you remember who the other people were?
 20 A. Randy Brashear was there and Billy Joe are
 21 the only two that I can remember. There were other
 22 people in there, but I can't remember who it was.
 23 Q. And the conversation was about the voided
 24 ballot?
 25 A. Yes.

1 HEARING OFFICER DUFFEY: Who is Randy
 2 Brashear?
 3 THE WITNESS: He's a corrosion specialist.
 4 BY MR. HAMMETT:
 5 Q. And he's also out of the Hazard office?
 6 A. Yes.
 7 Q. Do you remember what else was being discussed
 8 during that? Was it just a general discussion of
 9 employees out in the office? Or what part of the office
 10 were they in?
 11 A. We were in the -- in the middle part of the
 12 office where a lot of the operators plug their computers
 13 in to get online.
 14 Q. And employees were just talking about the
 15 election and the voided ballot?
 16 A. Yes.
 17 Q. Okay. And you just remember specifically
 18 that Billy Joe had made a comment about the voided
 19 ballot?
 20 A. Yes. Because that's the first I'd heard of
 21 it. I did not know it happened.
 22 Q. Okay. Now, after that, did you have a
 23 conversation with Randy Brashear?
 24 A. Yes.
 25 Q. And again, Randy Brashear -- I think you said

<p style="text-align: right;">Page 37</p> <p>1 he was a corrosion specialist?</p> <p>2 A. Corrosion specialist, I think is his title.</p> <p>3 Q. Okay. And now, does Randy report to you?</p> <p>4 A. No.</p> <p>5 Q. Does Billy Joe report to you?</p> <p>6 A. He reports to one of the supervisors that</p> <p>7 reports to me. So yes.</p> <p>8 Q. Okay. So tell me about the conversation with</p> <p>9 Randy Brashear.</p> <p>10 A. Randy came into my office, and we just talked</p> <p>11 briefly about how the bargaining process worked. And</p> <p>12 then we got onto discussing the voided ballot after that.</p> <p>13 And we were just discussing, like, we couldn't believe</p> <p>14 that somebody messed up on their ballot. And Randy said,</p> <p>15 "Well, I know it wasn't me. I took a picture of my</p> <p>16 ballot, and so did Freddie."</p> <p>17 Q. And who was he referring to in terms of</p> <p>18 Freddie?</p> <p>19 A. Freddie Watts.</p> <p>20 Q. And who is Freddie Watts?</p> <p>21 A. Freddie Watts is a -- I think he's a lead</p> <p>22 pipeline operator.</p> <p>23 Q. So tell me again where you were when you had</p> <p>24 that conversation?</p> <p>25 A. In my office.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. And did you have other conversations with any</p> <p>2 employees in Hazard around any of these issues?</p> <p>3 A. As far as photographs, no. Our employees had</p> <p>4 conversations with supervisors.</p> <p>5 Q. With supervisors?</p> <p>6 A. Yes.</p> <p>7 Q. Sharing information or --</p> <p>8 A. Yes.</p> <p>9 Q. What was the -- what was in those</p> <p>10 conversations?</p> <p>11 A. Some of the supervisors said that, you know,</p> <p>12 they had heard --</p> <p>13 MR. MANZOLILLO: I'm going to object based on</p> <p>14 hearsay.</p> <p>15 HEARING OFFICER DUFFEY: Sustained.</p> <p>16 BY MR. HAMMETT:</p> <p>17 Q. So once you had this conversation with Randy</p> <p>18 Brashear, and he said that he had taken pictures as well</p> <p>19 as Freddie Watts had taken a picture of a ballot?</p> <p>20 A. Yes.</p> <p>21 Q. You reported that?</p> <p>22 A. Yes.</p> <p>23 Q. What happened after that? Do you know what</p> <p>24 happened? Did anything happen with respect to their</p> <p>25 phones?</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. And did Randy initiate this conversation, or</p> <p>2 did you?</p> <p>3 A. Randy did. He came into my office.</p> <p>4 Q. Did he come in -- I mean, was the</p> <p>5 conversation just about that? Or did you talk about</p> <p>6 other things?</p> <p>7 A. No. It was a very brief conversation. We</p> <p>8 just talked about how the bargaining process worked and</p> <p>9 how hopefully everyone could get along in the bargaining</p> <p>10 process. And then we just started talking about the</p> <p>11 voided ballot again. And that's when he made the comment</p> <p>12 about taking the picture of the ballot. But it was very</p> <p>13 brief, maybe five-minute conversation that day.</p> <p>14 Q. Okay. Did you report -- who did you report</p> <p>15 that to?</p> <p>16 A. My supervisor, Darrell Smith.</p> <p>17 Q. Okay. And so you reported the conversation</p> <p>18 with Randy Brashear to your supervisor?</p> <p>19 A. Yes.</p> <p>20 Q. At some point did you talk with Maverick</p> <p>21 Bentley about it?</p> <p>22 A. Yes.</p> <p>23 Q. And reported -- what you've testified here,</p> <p>24 you told Maverick?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Their phones were confiscated.</p> <p>2 Q. By you?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. I wasn't there when the phones were</p> <p>6 confiscated.</p> <p>7 Q. Okay. Did Randy -- when he said he had taken</p> <p>8 a picture, did he explain why he took a picture?</p> <p>9 A. He said he took a picture, because during the</p> <p>10 last election, that there was several people that said</p> <p>11 they did not -- said they did vote "Yes" for the union,</p> <p>12 but there was only a handful of people that actually did</p> <p>13 vote "Yes." So he took a picture of his ballot to show</p> <p>14 that he had voted "Yes."</p> <p>15 Q. To prove --</p> <p>16 A. That he had voted "Yes."</p> <p>17 MR. HAMMETT: Pass the witness.</p> <p>18 HEARING OFFICER DUFFEY: Cross-examination?</p> <p>19 CROSS-EXAMINATION</p> <p>20 BY MR. MANZOLILLO:</p> <p>21 Q. Yes, your Honor. Just briefly. So your</p> <p>22 conversation with Mr. Brashear took place the day after</p> <p>23 the election?</p> <p>24 A. Yes.</p> <p>25 Q. And did Mr. Brashear indicate he'd did</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 anything with this picture?</p> <p>2 A. No.</p> <p>3 Q. But to your knowledge, he didn't do anything</p> <p>4 except keep it on his camera -- his phone?</p> <p>5 A. To my knowledge.</p> <p>6 MR. MR. MANZOLILLO: I have nothing further.</p> <p>7 HEARING OFFICER DUFFEY: Redirect? All right</p> <p>8 Mr. Cooke, you're excused. I just caution you not to</p> <p>9 discuss your testimony with any other witnesses.</p> <p>10 THE WITNESS: Okay. Thank you very much.</p> <p>11 (A discussion was held off the record.)</p> <p>12 HEARING OFFICER DUFFEY: Would you state your</p> <p>13 full name, please.</p> <p>14 THE WITNESS: Kevin L. Andrews.</p> <p>15 KEVIN ANDREWS was thereupon called as a</p> <p>16 witness and, after having been first duly sworn,</p> <p>17 testified as follows:</p> <p>18 HEARING OFFICER DUFFEY: Please have a seat.</p> <p>19 DIRECT EXAMINATION</p> <p>20 BY MR. FAYKUS:</p> <p>21 Q. Good morning, Mr. Andrews.</p> <p>22 A. Good morning.</p> <p>23 Q. Mr. Andrews, are you employed by EQT?</p> <p>24 A. Yes. I am.</p> <p>25 Q. What's your job with EQT?</p>	<p style="text-align: right;">Page 43</p> <p>1 reports?</p> <p>2 A. I became aware of them from my boss in the</p> <p>3 discussion of what surrounded the activity were observers</p> <p>4 observed photos being taken. Employees admitting to</p> <p>5 taking the photographs --</p> <p>6 MR. MANZOLILLO: Objection. I'm going to</p> <p>7 object to hearsay. There's no foundation for any of</p> <p>8 these allegations. And also relevancy -- allegation or</p> <p>9 any presentation of evidence of people observing pictures</p> <p>10 being taken.</p> <p>11 MR. FAYKUS: Well, I'll just say that it is a</p> <p>12 job role as company security. And we're just trying to</p> <p>13 establish his role in the investigation, how it came to</p> <p>14 him.</p> <p>15 HEARING OFFICER DUFFEY: I'm going to</p> <p>16 overrule the objection to allow it for the purpose of</p> <p>17 laying a foundation. Okay. You may continue.</p> <p>18 BY MR. FAYKUS:</p> <p>19 Q. So again, I'll just ask the question. When</p> <p>20 did you first begin aware of these reports?</p> <p>21 A. From the discussion I had with my boss, who I</p> <p>22 report to. A discussion obtained conversations of</p> <p>23 observers observing employees taking photos while they</p> <p>24 were in the process of voting. And then communication</p> <p>25 around employees transmitting those photos to other</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Corporate security manager.</p> <p>2 Q. Can you briefly describe what your job duties</p> <p>3 are?</p> <p>4 A. Yeah. I'm responsible for physical security</p> <p>5 and safety and protection, investigation in code of</p> <p>6 business conduct violations, legal or unethical concerns</p> <p>7 or incidents.</p> <p>8 Q. How long have you worked with EQT?</p> <p>9 A. Just over three years.</p> <p>10 Q. What office are you based out of?</p> <p>11 A. The EQT headquarters of Pittsburgh.</p> <p>12 Q. Sir, are you aware that an election took</p> <p>13 place on Thursday, June 21 by a group of EQT employees to</p> <p>14 determine representation by the United Steel Workers; is</p> <p>15 that correct?</p> <p>16 A. Yes. I am.</p> <p>17 Q. And you were aware there have been several</p> <p>18 reports regarding the election since that time?</p> <p>19 A. Yes. I am.</p> <p>20 Q. And Mr. Andrews, what reports have been</p> <p>21 raised to you in your job as company security?</p> <p>22 A. So there have been reports that have been</p> <p>23 relayed to me that relate to photos of election ballots</p> <p>24 being taken and transmitted via company iPhones.</p> <p>25 Q. And how did you first become aware of these</p>	<p style="text-align: right;">Page 44</p> <p>1 employees via company work phones. And to the point</p> <p>2 where one employee told his supervisor that he and</p> <p>3 another employee had actually taken photos of their</p> <p>4 ballots while they were voting.</p> <p>5 Q. And after you first received these reports,</p> <p>6 were there any discussions about what action might be</p> <p>7 taken?</p> <p>8 A. So the -- once I received that information,</p> <p>9 and to try to understand whether this had happened or</p> <p>10 not, we had a discussion about we should pick up those</p> <p>11 two phones where the employee had stated to his</p> <p>12 supervisor that he had taken photos and made the same</p> <p>13 statement with regard to another employee taking those</p> <p>14 photos of the ballot. So we focused on those two phones</p> <p>15 to decide whether this has happened or not.</p> <p>16 Q. And as far as you said there was a decision</p> <p>17 made to confiscate the phones, what was your role?</p> <p>18 A. My role was to meet with Maverick Bentley,</p> <p>19 the director of operations here in Kentucky, Monday</p> <p>20 morning on the 25th. And to travel down to the Hazard</p> <p>21 office where the two employees reported to. I arrived</p> <p>22 there at approximately 7:00 in the morning to meet with</p> <p>23 those two employees.</p> <p>24 Q. And what were those two employees' names?</p> <p>25 A. Brashear and Watts. Randy Brashear and</p>

1 Freddie Watts.

2 Q. And what was your understanding as why these
3 two employees were identified to have their phones
4 confiscated?

5 A. To the fact that Brashear had stated to his
6 supervisor that he had taken photos of his ballot while
7 voting. And that he stated that Watts had also taken
8 photos of the ballot while voting.

9 Q. Was there any consideration of confiscating
10 other phones?

11 A. No. It was these two folks that had -- one
12 had identified himself, and he identified another. And
13 the focus was just to ascertain whether it occurred or
14 not.

15 Q. So the purpose of confiscating the phones, as
16 you put it, was to ascertaining whether it had happened
17 or not?

18 A. That's correct.

19 Q. So I want to move now to the actual meeting
20 date of when you said you traveled down to the Hazard
21 office. Can you just start at the beginning of that
22 meeting and walk us through?

23 A. Sure. Maverick and I arrived at the office,
24 walked inside the Hazard office. Employees were there.
25 They normally report at that time. Maverick identified

1 the two employees, Brashear and Watts, and asked them to
2 step inside an office with he and I. At that time
3 Maverick had asked the employees for their company
4 iPhones. Watts had turned his over his phone to me.
5 Brashear and Maverick exited the room and came back with
6 Brashear's phone. Gone approximately ninety seconds. He
7 had to go retrieve it. It was somewhere else.

8 Brashear had his phone in his hand, I believe
9 it was his left hand. And his right hand physically
10 appeared to be putting the code in his phone. Asked him
11 to give me the phone. Gave me the phone. And at that
12 time, I asked for the passcodes and wrote the passcodes
13 down for each phone.

14 And the whole meeting lasted somewhere
15 between five or ten minutes, give or take. And then we
16 exited the building and left.

17 Q. Now, the two cell phones that we're talking
18 about here, do you know if those were EQT-issued phones?

19 A. Correct. They were EQT-issued company
20 phones.

21 Q. So they were EQT's property then?

22 A. That's correct.

23 Q. Do you know if EQT has a policy about the
24 return of company property?

25 A. Yes. They do. It's an information

1 technology policy. EQT reserves the right for all EQT
2 IT, iPhones, cell phones, laptops, et cetera. There's no
3 expectation of personal privacy on the equipment.

4 Q. So after you confiscated those two phones
5 from Mr. Brashear and Mr. Watts, what did you do with the
6 phones?

7 A. I took the phones back to Pittsburgh, the
8 company headquarters, and locked them in my office that
9 week. And then from that week -- following week, turned
10 those over to a forensic company that we use regularly to
11 conduct analysis on IT equipment provided for the
12 workforce.

13 Q. So let me step back a second. Before you
14 turned those phones over to the forensic company, was any
15 analysis performed on the phones?

16 A. Yes. I did. I actually looked at the two
17 phones, both phones, and the photo app to determine if
18 there was an actual photograph taken of the ballots.
19 Opened Beshear's photo app, confirmed that there was an
20 actual ballot picture there that he had taken of his
21 ballot voting process. Opened up the same app on Watts's
22 phone. I did not see the photo on there.

23 Q. You said the following week the phones were
24 turned over to a forensics company; is that correct?

25 A. That is correct.

1 Q. What's the name of that company?

2 A. Bit By Bit.

3 Q. And does the company -- has the company
4 worked with Bit By Bit in the past?

5 A. Yes. That's correct. We have a working
6 relationship with them.

7 Q. After the phones were turned over to Bit By
8 Bit Forensics, do you know if they actually performed an
9 forensics analysis on the phones?

10 A. Yes. They did. They performed a forensic
11 analysis on both phones and prepared reports for those.

12 Q. And what was -- what did their reports
13 uncover?

14 A. Their reports revealed that the ballot photo
15 for Beshear's phone was discovered in his photo app on
16 his company iPhone, with the date and approximate time of
17 the voting. And then on the Watts phone, a photo of his
18 ballot was discovered in the trash of that photo app with
19 the same date and approximate time of the voting.

20 Q. And thereafter, did you receive a copy of
21 that report?

22 A. I had a discussion with my boss of the
23 results of the report and received the information from
24 him.

25 Q. But thereafter, did you actually receive a

<p style="text-align: right;">Page 49</p> <p>1 copy?</p> <p>2 A. Yes. I did.</p> <p>3 MR. FAYKUS: Question. Are exhibit stickers</p> <p>4 good?</p> <p>5 HEARING OFFICER DUFFEY: That's fine.</p> <p>6 MR. MANZOLILLO: Can I see the exhibit just a</p> <p>7 second?</p> <p>8 MR. FAYKUS: I think I've got enough copies</p> <p>9 here.</p> <p>10 BY MR. FAYKUS:</p> <p>11 Q. Mr. Andrews, I just handed you what's been</p> <p>12 marked as EQT Exhibit 1. Do you recognize this document?</p> <p>13 A. Yes. I do.</p> <p>14 Q. What is it?</p> <p>15 A. It is the extraction report from the forensic</p> <p>16 analysis conducted by Bit By Bit.</p> <p>17 Q. And just to clarify, the extraction report</p> <p>18 done by Bit By Bit, as to the two phones, were</p> <p>19 Mr. Beshear's and Mr. Watts's phone?</p> <p>20 A. That's correct.</p> <p>21 Q. And turning through to the pictures there,</p> <p>22 what are those?</p> <p>23 A. Those are actual pictures of the ballots that</p> <p>24 were taken by the phone during the voting process.</p> <p>25 Q. Okay. And this is the report that you</p>	<p style="text-align: right;">Page 51</p> <p>1 message may or may not show up on a phone?</p> <p>2 A. Yes. From the iMessaging app with the</p> <p>3 iPhones, it could be deleted and not recovered because of</p> <p>4 the app's application. It's designed that way. And once</p> <p>5 it's deleted, it cannot be recovered, so.</p> <p>6 Q. So as I understand it in the Apple iPhone</p> <p>7 application, if an iMessage is deleted from that, it</p> <p>8 cannot be recovered; is that correct?</p> <p>9 A. That's correct.</p> <p>10 MR. FAYKUS: So I'll pass.</p> <p>11 HEARING OFFICER DUFFEY: Okay.</p> <p>12 Cross-examination?</p> <p>13 CROSS-EXAMINATION</p> <p>14 BY MR. MANZOLILLO:</p> <p>15 Q. Yes. Mr. Andrews, my name is Mr. Manzolillo.</p> <p>16 I'm an attorney for the steel workers. Just a couple of</p> <p>17 questions for you. So there was no record of any texts</p> <p>18 being sent or these pictures being shared in way on those</p> <p>19 phones?</p> <p>20 A. I did not find any. No.</p> <p>21 Q. Now, all the -- are all employees at EQT</p> <p>22 issued a company phone?</p> <p>23 A. Not all employees, but a majority of</p> <p>24 employees. Typically the folks who conduct field</p> <p>25 operations so that they have a -- can be provided a way</p>
<p style="text-align: right;">Page 50</p> <p>1 received from the --</p> <p>2 A. Yes.</p> <p>3 MR. FAYKUS: Introduce EQT Exhibit 1.</p> <p>4 MR. MANZOLILLO: No objection.</p> <p>5 HEARING OFFICER DUFFEY: Okay. It will be</p> <p>6 admitted.</p> <p>7 (Employer's Exhibit No. 1 was marked for</p> <p>8 identification and received in evidence.)</p> <p>9 BY MR. FAYKUS:</p> <p>10 Q. Mr. Andrews, in your analysis of the phones,</p> <p>11 what text messages were located on -- did you locate on</p> <p>12 the phone that were sending pictures?</p> <p>13 A. I did not locate any text messages.</p> <p>14 Q. You didn't locate any messages? Why might</p> <p>15 there not have been any messages for you to locate?</p> <p>16 MR. MANZOLILLO: I'm going to object to</p> <p>17 speculation.</p> <p>18 HEARING OFFICER DUFFEY: I'm going to</p> <p>19 sustain. If you want to lay to some foundation, that'd</p> <p>20 be fine. It sounds speculative at this point. But if</p> <p>21 you lay some foundation.</p> <p>22 BY MR. FAYKUS:</p> <p>23 Q. Okay. Mr. Andrews, so in your experience</p> <p>24 when analyzing phones and your experience here, is it</p> <p>25 your understanding that there's any reason why a text</p>	<p style="text-align: right;">Page 52</p> <p>1 to communicate. So all employees that operate in the</p> <p>2 field do have company iPhones.</p> <p>3 Q. And the policy you discussed -- described</p> <p>4 earlier that any phone could be confiscated because it's</p> <p>5 EQT property, that would apply to all those phones;</p> <p>6 right?</p> <p>7 A. That's correct.</p> <p>8 Q. And yet these were the only two phones that</p> <p>9 were confiscated?</p> <p>10 A. That's correct. Because they identified</p> <p>11 themselves as taking the photos.</p> <p>12 MR. MANZOLILLO: I don't have anything else.</p> <p>13 HEARING OFFICER DUFFEY: Redirect?</p> <p>14 MR. FAYKUS: I don't think so.</p> <p>15 HEARING OFFICER DUFFEY: Okay. Mr. Andrews,</p> <p>16 thank you. I just caution you not to discuss your</p> <p>17 testimony with any potential witness. You're excused.</p> <p>18 MR. MANZOLILLO: Can we take about ten</p> <p>19 minutes?</p> <p>20 HEARING OFFICER DUFFEY: Yeah. So let's go</p> <p>21 off the record, and we'll be back on at ten after 10:00.</p> <p>22 (A recess was taken at 10:01 a.m., after</p> <p>23 which the proceedings were resumed at 10:15 a.m. as</p> <p>24 follows.)</p> <p>25 HEARING OFFICER DUFFEY: All right. Would</p>

<p style="text-align: right;">Page 53</p> <p>1 the Union care to call its first witness?</p> <p>2 MR. MANZOLILLO: Yes. Rick Taylor.</p> <p>3 HEARING OFFICER DUFFEY: Sir, you can come on</p> <p>4 up here. Would you state your name, please.</p> <p>5 THE WITNESS: Rick Taylor.</p> <p>6 HEARING OFFICER DUFFEY: Rick Taylor? Okay?</p> <p>7 Mr. Taylor, would you raise your right hand.</p> <p>8 RICK TAYLOR was thereupon called as a witness</p> <p>9 and, after having been first duly sworn, testified as</p> <p>10 follows:</p> <p>11 HEARING OFFICER DUFFEY: All right. Please</p> <p>12 have a seat.</p> <p>13 MR. HAMMETT: Brad, I'm just standing here</p> <p>14 because I can't hear all the way over there.</p> <p>15 MR. MR. MANZOLILLO: Okay. Yeah.</p> <p>16 MR. HAMMETT: I just wanted to make sure you</p> <p>17 knew I was --</p> <p>18 MR. MANZOLILLO: Yeah. This is counsel for</p> <p>19 the employer.</p> <p>20 THE WITNESS: Okay.</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MR. MANZOLILLO:</p> <p>23 Q. Mr. Taylor, can you -- we already have his</p> <p>24 name. Can you spell your name for the record.</p> <p>25 A. My name is Rick Taylor, R-i-c-k.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Were there any other organizers involved in</p> <p>2 the campaign?</p> <p>3 A. John Mitchell was involved. And then Brian</p> <p>4 Wedge, who's typically staff rep, was also involved with</p> <p>5 the organizing. Myself and John Mitchell were the</p> <p>6 organizers that were involved.</p> <p>7 Q. And Mr. Wedge -- you say he's a staff</p> <p>8 representative. Just to clarify that. He does</p> <p>9 bargaining and --</p> <p>10 A. He does bargaining and representing the</p> <p>11 union.</p> <p>12 Q. Okay. And during this time was part of your</p> <p>13 duty to meet with committee and talk about the election?</p> <p>14 A. Yes.</p> <p>15 Q. Talk about the campaign?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. At any time during that, did anybody</p> <p>18 from the union give any instructions or discuss keeping a</p> <p>19 list of employees who voted during the election?</p> <p>20 A. No.</p> <p>21 Q. Were there ever instructions given or</p> <p>22 discussions of employees taking pictures of the ballots?</p> <p>23 A. No.</p> <p>24 Q. Of sharing pictures of ballots?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 54</p> <p>1 T-a-y-l-o-r.</p> <p>2 Q. And are you employed by the United Steel</p> <p>3 Workers?</p> <p>4 A. Yes. I am.</p> <p>5 Q. And what's your job with the Steel Workers?</p> <p>6 A. I work for the organizing department doing</p> <p>7 organizing work.</p> <p>8 Q. And how long have you been doing that?</p> <p>9 A. About four years.</p> <p>10 Q. And how many campaigns have you worked on?</p> <p>11 A. Many.</p> <p>12 Q. Many?</p> <p>13 A. I forget the count. Twenty-five or more.</p> <p>14 Q. Okay. And you were involved in the EQT</p> <p>15 election campaign?</p> <p>16 A. Yes.</p> <p>17 Q. And this is the vote that took place on June</p> <p>18 21st?</p> <p>19 A. Yes.</p> <p>20 Q. And what was your role in that campaign?</p> <p>21 A. I was the -- worked as an organizer. I held</p> <p>22 meetings and talked to people about the advantages of</p> <p>23 having a union in the workplace and that kind of thing.</p> <p>24 And then also on the day of the vote, I represented the</p> <p>25 union in sitting in at the polling place.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Did anybody from the organizing committee --</p> <p>2 employee organizing committee or the lead people, the</p> <p>3 lead employees of the campaign, did they ever discuss</p> <p>4 that with you?</p> <p>5 A. No.</p> <p>6 Q. To your knowledge, was any list of employees</p> <p>7 kept?</p> <p>8 A. No.</p> <p>9 MR. MANZOLILLO: I have nothing further.</p> <p>10 HEARING OFFICER DUFFEY: Cross?</p> <p>11 MR. HAMMETT: Nothing.</p> <p>12 HEARING OFFICER DUFFEY: Okay. Mr. Taylor,</p> <p>13 you're excused. I'm going to caution you not to discuss</p> <p>14 your testimony with any other potential witnesses. Thank</p> <p>15 you. Who's the union's next witness?</p> <p>16 MR. MR. MANZOLILLO: The union's next witness</p> <p>17 is Mr. James Maynard.</p> <p>18 (A discussion was held off the record.)</p> <p>19 HEARING OFFICER DUFFEY: Sir, you can come on</p> <p>20 up. You'll be up here in this seat. Okay. I have your</p> <p>21 first name as James, what's your last name?</p> <p>22 THE WITNESS: Maynard, M-a-y-n-a-r-d.</p> <p>23 HEARING OFFICER DUFFEY: Okay. Could you</p> <p>24 please raise your right hand.</p> <p>25 JAMES MAYNARD was thereupon called as a</p>

<p style="text-align: right;">Page 57</p> <p>1 witness and, after having been first duly sworn, 2 testified as follows: 3 HEARING OFFICER DUFFEY: Please have a seat. 4 DIRECT EXAMINATION 5 BY MR. MANZOLILLO: 6 Q. Mr. Maynard, are you employed by EQT? 7 A. Yes. 8 Q. And how long have you been employed there? 9 A. January of this past year is forty years. 10 Q. And what is your position there? 11 A. Senior welder. 12 Q. Can you just briefly describe what your job 13 involves. 14 A. Repair and maintain pipelines, welding 15 pipelines, working in the compressor station, welding, 16 and associated work around that. 17 Q. Are you out of any particular office? 18 A. Usually my office I normally report to is 19 Dwale. 20 Q. Which one? 21 A. Dwale, Kentucky? 22 HEARING OFFICER DUFFEY: Can you spell that. 23 THE WITNESS: D-w-a-l-e. 24 HEARING OFFICER DUFFEY: Thank you. 25 BY MR. MANZOLILLO:</p>	<p style="text-align: right;">Page 59</p> <p>1 A. Contact coal workers and stuff. Call them at 2 night and talk to them, kind of get their feelings on it 3 and see if they needed any information on how things 4 worked and answer questions they had or direct them to 5 somebody that could answer them if I couldn't. 6 Q. Okay. Were you one of the lead activists 7 during the campaign? 8 A. Yes. 9 Q. Can you briefly describe some of the 10 discussions that took place during the campaign work. 11 A. Some of the things they would ask was how 12 much was the union dues, how do they collect them, how 13 the structure of the union is set up, who we negotiated 14 for, who the officers were going to be, how we elect 15 officers, and things of that nature. 16 Q. And in your experience and to your knowledge, 17 did any of these discussion ever turn argumentative? 18 A. No. 19 Q. Threatening or intimidating in any way? 20 A. No. 21 Q. And are you familiar with Mr. Taylor, 22 Mr. Wedge, and Mr. Mitchell? 23 A. Yes. 24 Q. And who are they? 25 A. They're the USW representatives.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. And do you normally interact during the 2 course of the day with other workers? 3 A. Yes. 4 Q. And can you describe that. 5 A. Yeah. Just when we've got a project for the 6 day set up that we do, we get together and develop a 7 plan, safety plan, and everything and carry out that job 8 throughout the day to get the task performed. 9 Q. And how many workers would that typically 10 involve? 11 A. It runs anywhere from usually just between 12 the one I've got, mostly. But there's quite a few times 13 also that we'll that have three or four, maybe five in 14 the crew, depending on the size of the project. 15 Q. And are you familiar with the United Steel 16 Workers? 17 A. Yes. 18 Q. And are you familiar with the recent election 19 that took place there? 20 A. Yes. 21 Q. On June 21st? 22 A. Yes. 23 Q. Were you actively involved with the campaign? 24 A. Yes. 25 Q. And can you describe what you did?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Did you ever hear any of them to give 2 instructions to any worker about keeping a list of 3 employees of who voted during the election? 4 A. No. 5 Q. Did you ever hear of them give any 6 instructions or talk about employees taking pictures of 7 ballots? 8 A. No. 9 Q. Of sharing pictures of ballots? 10 A. No. 11 Q. Did you ever hear anything from any of the 12 other lead activists during the campaign about any of 13 those things? 14 A. No. 15 Q. From any coworkers at all? 16 A. No. 17 Q. Okay. And did you attend a safety meeting on 18 the day of the election? 19 A. Yes. 20 Q. Okay. And what time is your safety meeting? 21 A. It was at 2:00 in the afternoon after the 22 poles -- after the election had finished. 23 Q. It started right at 2:00? 24 A. Yes. Right around 2:00. 25 Q. Okay. And do you remember what was discussed</p>

15 (Pages 57 to 60)

1 at that meeting?

2 A. Just generally -- I don't know the exact

3 topics that they talked about. Fire safety and things

4 like that.

5 Q. About how long did that go on?

6 A. Probably ten, five -- eight or ten minutes,

7 something like that. Just what took place.

8 Q. Was there any discussion of the election

9 during that meeting that you recall?

10 A. No.

11 Q. And when did you learn the results of the

12 election?

13 A. One of the guys there, after the election was

14 over and votes counted, texted me the count -- final

15 count of voting.

16 Q. Okay. Did you take a picture of your ballot?

17 A. No.

18 MR. MANZOLILLO: I don't have any other

19 questions for this witness.

20 HEARING OFFICER DUFFEY: Okay.

21 Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. HAMMETT:

24 Q. Mr. Maynard, when did you say you heard the

25 election results?

1 A. During the safety meeting. That's probably

2 around five or ten after 2:00, somewhere in that

3 neighborhood.

4 Q. Now, you said you were active in the campaign

5 here leading up to the election; correct?

6 A. Yes.

7 Q. Did -- in the course of all of that, did you

8 talk about what happened in the 2011 election?

9 A. No.

10 Q. Were you involved in the 2011 election?

11 A. Not to the extent that I am now.

12 Q. Not in the same way?

13 A. No.

14 MR. HAMMETT: Okay. Nothing further.

15 HEARING OFFICER DUFFEY: Redirect?

16 MR. MANZOLILLO: Nothing.

17 HEARING OFFICER DUFFEY: Okay. Mr. Maynard,

18 you're excused. I just caution you not to discuss your

19 testimony with any other potential witness. All right.

20 Thank you.

21 (A discussion was held off the record.)

22 HEARING OFFICER DUFFEY: State your full

23 name, sir.

24 THE WITNESS: Jason Russell Stewart.

25 HEARING OFFICER DUFFEY: Raise your right

1 hand.

2 JASON STEWART was thereupon called as a

3 witness and, after having been first duly sworn,

4 testified as follows:

5 HEARING OFFICER DUFFEY: Okay. Please have a

6 seat.

7 DIRECT EXAMINATION

8 BY MR. MANZOLILLO:

9 Q. Hi, Mr. Stewart. Are you employed by EQT?

10 A. Yes, sir.

11 Q. Okay. And how long have you been employed

12 there?

13 A. Ten years March.

14 Q. Okay. This past March?

15 A. This past March is ten years.

16 Q. And what's your current job?

17 A. I'm a senior welder.

18 Q. All right. And can you just tell us briefly

19 what you do.

20 A. Lay pipeline, do pipeline repairs, compressor

21 station work, just station work types.

22 Q. And during the course of a typical day, do

23 you interact with other workers?

24 A. Yes.

25 Q. And about how many and how often?

1 A. It will be one to two a day.

2 Q. Okay. And are you familiar with the United

3 Steel Workers?

4 A. Yes.

5 Q. And you're familiar with the recent election

6 that involved the steel workers, June 21st?

7 A. Yes, sir.

8 Q. And were you involved with the election

9 campaign at all?

10 A. Yes, sir. I was the observer.

11 Q. You were the election observer? Were you

12 involved in the weeks leading up to the campaign?

13 A. Yes, sir.

14 Q. And in what ways?

15 A. Just handing out cards, talking. You know,

16 answering questions about the union.

17 Q. Okay. Do you remember any discussions that

18 took place?

19 A. No. Not really. I mean, it was basically

20 just people asking questions, you know, about different

21 aspects of it. That's about the extent of it.

22 Q. Okay. And in your experience and to your

23 knowledge, did any of those discussions ever turn

24 argumentative?

25 A. No, sir.

1 Q. Did they ever turn threatening?
 2 A. No, sir.
 3 Q. And are you familiar with Mr. Rick Taylor,
 4 Mr. John Mitchell, and Mr. Brian Wedge?
 5 A. Yes, sir.
 6 Q. And who were they?
 7 A. They were the union representatives.
 8 Q. Did you meet with them and interact with them
 9 during the campaign?
 10 A. Just with meetings, a variety of meetings.
 11 Q. And to your knowledge, did they ever discuss
 12 or instruct people -- employees to keep a list of who
 13 voted during the union -- during the election?
 14 A. No, sir.
 15 Q. Did they ever discuss or instruct employees
 16 about taking pictures of the ballots?
 17 A. No, sir.
 18 Q. Did they ever discuss or instruct people to
 19 share pictures of ballots?
 20 A. No, sir.
 21 Q. Did you take a picture of your ballot?
 22 A. No, sir.
 23 Q. When did you vote during that election?
 24 A. I don't know exactly -- the exact time. But
 25 it was during a down time when there wasn't -- you know,

1 there was an initial -- quite a few that came through all
 2 at once, and then when that kind of died down, that's
 3 when I voted.
 4 Q. And now, did any of your other coworkers or
 5 lead activists discuss keeping a list during the
 6 election, to your knowledge?
 7 A. No, sir.
 8 Q. Did they discuss employees taking pictures of
 9 ballots?
 10 A. No.
 11 Q. Of sharing those pictures?
 12 A. No, sir.
 13 Q. Did you attend a -- did anybody share a
 14 ballot with you? A picture of a ballot with you?
 15 A. No, sir.
 16 Q. Did you attend the safety meeting the day of
 17 the election?
 18 A. Yes, sir.
 19 Q. When was that?
 20 A. I attended the morning meeting.
 21 Q. And when did that start?
 22 A. I'm not real sure on the start time of it. I
 23 was there approximately thirty minutes, forty minutes,
 24 because I had to leave to meet with the labor board to
 25 get it set up.

1 Q. For the election?
 2 A. The election.
 3 Q. Do you recall what was said during the safety
 4 meeting while you were present?
 5 A. No, sir.
 6 Q. Was there any discussion of the election?
 7 A. No, sir.
 8 Q. Now, in your role as the observer, can you
 9 describe what you did?
 10 A. We would check off the names as they came in.
 11 They would come in one at time, and they would state
 12 their name. And we would go through the list, find their
 13 name on the list, and I would check -- we had two color
 14 pens. I would check my color. The other observer would
 15 check his color. And just to see -- just checking to see
 16 if we had any objections or anything. Just to make sure
 17 they were on the list. And were --
 18 Q. Make sure somebody wasn't voting that wasn't
 19 supposed to vote?
 20 A. Exactly.
 21 Q. Or voting twice?
 22 A. Exactly.
 23 Q. Were you -- was the board present during
 24 that? During that period?
 25 A. Yes, sir.

1 Q. And can you describe what the layout of the
 2 election board.
 3 A. It was a small room. Had a long -- like, a
 4 conference table.
 5 Q. Where was this located?
 6 A. This was in the Pikeville library.
 7 Q. Okay. So go ahead. Long room?
 8 A. It was -- had a long conference table. And
 9 they set the voting booth up in the far right-hand corner
 10 of the room from where we were sitting. And we sat
 11 across from the booth, about center table. And the labor
 12 board agent sat behind -- right behind the voting booth.
 13 Q. Okay. And how many employees would come in
 14 to vote at a time?
 15 A. Only one at a time.
 16 Q. Only one person allowed --
 17 A. Only one person was allowed in the room.
 18 Q. Okay. So if in the room, at any given time,
 19 there was -- if there was a voter, there would be one
 20 voter maximum, as well as the two observers and the board
 21 agent?
 22 A. Yes, sir.
 23 Q. Nobody else could see into the room?
 24 A. No. If anybody tried come in two at a time,
 25 we would push them -- we would tell them one at a time.

<p style="text-align: right;">Page 69</p> <p>1 They had to exit the room.</p> <p>2 Q. Okay. Did you observe any of those employees</p> <p>3 keeping a list of who voted?</p> <p>4 A. No, sir.</p> <p>5 Q. Did you observe anybody taking a picture of a</p> <p>6 ballot?</p> <p>7 A. No, sir.</p> <p>8 MR. MANZOLILLO: I have nothing further.</p> <p>9 HEARING OFFICER DUFFEY: Okay.</p> <p>10 Cross-examination?</p> <p>11 CROSS-EXAMINATION</p> <p>12 BY MR. HAMMETT:</p> <p>13 Q. Yes. Just a few questions. Just picking up</p> <p>14 on the actual voting room itself so that we have in the</p> <p>15 record everything that occurred. I think I want to pick</p> <p>16 up just that end of the election. So the election was</p> <p>17 over at 1:30; right?</p> <p>18 A. Yes.</p> <p>19 Q. And then after that, the board agent opened</p> <p>20 the door for people to come in and to be there for the</p> <p>21 vote count; is that correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So the Steel Workers' observers or</p> <p>24 representatives were there, I was there. There was</p> <p>25 several other people in that room. So once those people</p>	<p style="text-align: right;">Page 71</p> <p>1 then straightened all the ballots and stacked them out</p> <p>2 one at a time in a stack; is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And then after he did that, he told everybody</p> <p>5 what he was going to be doing. And that he was going to</p> <p>6 put the "Yes" votes here [indicating], he was going to</p> <p>7 put the "No" votes here [indicating].</p> <p>8 A. Yes, sir.</p> <p>9 Q. And then he went through each of those one at</p> <p>10 a time and announced what they were and put them in the</p> <p>11 stack one at a time; correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And there were, I believe, a total of one</p> <p>14 hundred sixteen ballots; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And there was one voided ballot; correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. So when he got to the voided ballot, he</p> <p>19 stopped and talked to people about the voided ballot.</p> <p>20 Said he was going -- it was going to be voided. And then</p> <p>21 he proceeded to finish the rest of the count; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And so he went through all of that, and then</p> <p>24 he counted them again; correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 70</p> <p>1 came in -- in fact there were a lot of people in the</p> <p>2 room, if I remember it correctly; right?</p> <p>3 A. Yes.</p> <p>4 Q. So the board agent took the ballot box, and</p> <p>5 took the ballots out. And then showed everybody the</p> <p>6 ballot box was empty; correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And then --</p> <p>9 MR. MANZOLILLO: I'm going to object to</p> <p>10 relevance just because I don't see what anything that</p> <p>11 happened after the election isn't a part of the</p> <p>12 objections themselves or relevant to the objections, with</p> <p>13 the ballot boxes. There's been no indication of</p> <p>14 tampering of the ballot box or anything along those</p> <p>15 lines.</p> <p>16 HEARING OFFICER DUFFEY: Can you give me an</p> <p>17 idea of where you're going with this?</p> <p>18 MR. HAMMETT: Yeah. It has nothing to do</p> <p>19 with tampering of the ballot boxes. It has to do with</p> <p>20 the time after.</p> <p>21 HEARING OFFICER DUFFEY: That's fine.</p> <p>22 BY MR. HAMMETT:</p> <p>23 Q. Has to do with the result. So just walking</p> <p>24 through the procedure so we have everything that occurred</p> <p>25 there before you had the final tally. So the board agent</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. He went through them again, counted them</p> <p>2 again, put them in stacks, put rubber bands around them,</p> <p>3 and then had a final election tally; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And which was given to -- I believe, you</p> <p>6 signed it; correct?</p> <p>7 A. Yes, sir. I believe.</p> <p>8 Q. And the company observer signed it as well;</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. So that was the procedure, and at that point</p> <p>12 you have a final tally of ballots. And if I remember</p> <p>13 correctly -- and I was there -- that took about twenty</p> <p>14 minutes or so? Something in that range; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Twenty or whatever. But it would've</p> <p>17 taken at least that amount of time; right?</p> <p>18 A. Yes.</p> <p>19 Q. You were talking about being an activist and</p> <p>20 having conversations, and I guess it sounded like you</p> <p>21 only had pleasant conversations. Did I get that</p> <p>22 testimony right?</p> <p>23 A. Yes, sir.</p> <p>24 Q. That all your conversations about the union</p> <p>25 were all pleasant conversations?</p>

<p style="text-align: right;">Page 73</p> <p>1 A. Yes, sir. I mean, I would get asked 2 questions just about, you know, how -- what was processes 3 of getting a contract going. Getting -- you know, how we 4 would negotiate this and that. I mean, it was -- that 5 was basically the extent of my questionings of it. And I 6 would answer what I could and would refer them or try to 7 get answers for them if I couldn't answer them. 8 MR. HAMMETT: Okay. Nothing further. 9 HEARING OFFICER DUFFEY: Any redirect? 10 REDIRECT EXAMINATION 11 BY MR. MANZOLILLO: 12 Q. Maybe just one. Mr. Stewart, did you look at 13 your watch during the count? During the count at any 14 point, did you note the exact time the count was 15 finished? 16 A. No, sir. 17 Q. So you don't really know exactly when the 18 count was finished? 19 A. No, sir. 20 MR. MANZOLILLO: All right. That's all I 21 have. 22 HEARING OFFICER DUFFEY: Any recross? 23 MR. HAMMETT: No. 24 HEARING OFFICER DUFFEY: Okay. Mr. Stewart, 25 you are excused. I just caution you not to discuss your</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. And how long have you been employed there? 2 A. Thirty-three years. 3 Q. And what's your job? 4 A. I'm a pipeline operator. 5 Q. And what does that involve? 6 A. I take care of discharge pipeline, 7 compression line. 8 Q. Okay. And are you familiar with the United 9 Steel Workers? 10 A. I am. 11 Q. Are you familiar with the election that took 12 place on June 21st? 13 A. Yeah. 14 Q. Okay. And the day of the election, did you 15 attend a safety meeting? 16 A. I did. 17 Q. And do you recall when that was? 18 A. It was the day of the election, June 21st. 19 Q. And when did that start? 20 A. It started around 2:00. 21 Q. Okay. Do you recall when you arrived at the 22 meeting? 23 A. It was somewhere around ten minutes to 2:00. 24 Maybe a little after. 25 Q. Okay. So a few minutes before the meeting</p>
<p style="text-align: right;">Page 74</p> <p>1 testimony with any other witnesses or potential 2 witnesses. Okay. Thank you very much. Let's go off the 3 record. 4 (A recess was taken at 11:42 a.m., after 5 which the proceedings were resumed at 10:45 a.m. as 6 follows.) 7 HEARING OFFICER DUFFEY: You can approach. 8 MR. MANZOLILLO: Union calls Mr. James 9 Olinger. 10 HEARING OFFICER DUFFEY: Mr. Olinger, would 11 you state and spell your name. 12 THE WITNESS: Jimmy Olinger. James Olinger. 13 O-I-i-n-g-e-r. 14 HEARING OFFICER DUFFEY: Okay. Can you raise 15 your right hand? 16 JIMMY OLINGER was thereupon called as a 17 witness and, after having been first duly sworn, 18 testified as follows: 19 HEARING OFFICER DUFFEY: Okay. Please have a 20 seat. 21 DIRECT EXAMINATION 22 BY MR. MANZOLILLO: 23 Q. All right. Mr. Olinger, are you employed by 24 EQT? 25 A. Yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 started? 2 A. Yeah. 3 Q. Okay. And do you recall having a discussion 4 with a Mr. Bailey at that meeting? 5 A. I do. 6 Q. Do you remember if it was before or after the 7 meeting? 8 A. It was somewhere in between when the meeting 9 started and when the meeting ended. 10 Q. Okay. So somewhere between a few minutes 11 before the start of the meeting and a few minutes after? 12 A. Yeah. It was somewhere around 2:00. 13 Q. Okay. And do you remember how that 14 conversation went? 15 A. I do. 16 Q. And could you describe that. 17 A. Well, he asked me how I thought -- about what 18 I thought about the vote. And I made an off-the-wall 19 comment that I had sixty-one votes on my cell phone. 20 Q. Okay. And did you in fact have sixty-one 21 votes on your cell phone? 22 A. No. He knew that when I said it. It was 23 kind of a joke between us. 24 Q. Okay. And did you keep any track or list of 25 who voted?</p>

<p style="text-align: right;">Page 77</p> <p>1 A. No.</p> <p>2 Q. Did you ever tell anybody else that?</p> <p>3 A. No.</p> <p>4 MR. MANZOLILLO: I have nothing further.</p> <p>5 HEARING OFFICER DUFFEY: Cross-examination?</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. HAMMETT:</p> <p>8 Q. Just a little bit. So your conversation or</p> <p>9 your comment to Mr. Bailey, you were just kidding?</p> <p>10 A. It was just -- yeah. Just off-the-wall</p> <p>11 comment. A jab, you know.</p> <p>12 Q. Had you heard anything about people taking</p> <p>13 pictures of their ballots?</p> <p>14 A. No.</p> <p>15 Q. Had you talk talked with anyone about that?</p> <p>16 A. No.</p> <p>17 MR. HAMMETT: Nothing further.</p> <p>18 MR. MANZOLILLO: Just one follow-up.</p> <p>19 HEARING OFFICER DUFFEY: Redirect?</p> <p>20 REDIRECT EXAMINATION</p> <p>21 BY MR. MANZOLILLO:</p> <p>22 Q. Where did you get the number sixty-one?</p> <p>23 A. We had a meeting, a rowdy meeting. And we</p> <p>24 was flip-flopping numbers, and the number sixty-one come</p> <p>25 up. And that's all. It just jumped up there. And</p>	<p style="text-align: right;">Page 79</p> <p>1 witness.</p> <p>2 HEARING OFFICER DUFFEY: Okay. We are off</p> <p>3 the record.</p> <p>4 (A recess was taken at 10:50 a.m., after</p> <p>5 which the proceedings were resumed at 10:53 a.m. as</p> <p>6 follows.)</p> <p>7 HEARING OFFICER DUFFEY: Okay. Let's go back</p> <p>8 on the record.</p> <p>9 MR. MANZOLILLO: Union calls Mr. Randy</p> <p>10 Brashear.</p> <p>11 HEARING OFFICER DUFFEY: Come on up here.</p> <p>12 Would you state and spell your full name for the record,</p> <p>13 please.</p> <p>14 A. Randall Brashear. R-a-n-d-a-l-l,</p> <p>15 B-r-a-s-h-e-a-r.</p> <p>16 RANDALL BRASHEAR was thereupon called as a</p> <p>17 witness and, after having been first duly sworn,</p> <p>18 testified as follows:</p> <p>19 HEARING OFFICER DUFFEY: Please have a seat.</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MR. MANZOLILLO:</p> <p>22 Q. Hi, Mr. Brashear. Are you employed by EQT?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And how long have you been employed</p> <p>25 there?</p>
<p style="text-align: right;">Page 78</p> <p>1 that's the only recollection I have.</p> <p>2 Q. So it was the guesstimate of how many</p> <p>3 supporters --</p> <p>4 A. Yeah. How many supporters.</p> <p>5 MR. MANZOLILLO: Nothing further.</p> <p>6 RECROSS-EXAMINATION</p> <p>7 BY MR. HAMMETT:</p> <p>8 Q. I'll just follow up on that. You said that</p> <p>9 number had come up at a rally?</p> <p>10 A. That had come up at a little get-together we</p> <p>11 had with the union guys.</p> <p>12 Q. Was that the night before?</p> <p>13 A. No. That was a few weeks ahead. Maybe a</p> <p>14 week or two ahead.</p> <p>15 MR. HAMMETT: Okay. Nothing further.</p> <p>16 HEARING OFFICER DUFFEY: Redirect?</p> <p>17 MR. MANZOLILLO: No redirect.</p> <p>18 HEARING OFFICER DUFFEY: Okay. Mr. Olinger,</p> <p>19 you're excused. But I'm just going to caution you not to</p> <p>20 discuss your testimony with any other witnesses or</p> <p>21 potential witnesses.</p> <p>22 THE WITNESS: Okay.</p> <p>23 HEARING OFFICER DUFFEY: Thank you.</p> <p>24 MR. MANZOLILLO: Your Honor, if I could have</p> <p>25 a few more minutes, I think we may be down to one</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Thirty-three years.</p> <p>2 Q. Okay. And what's your job?</p> <p>3 A. I'm the lead corrosion technician.</p> <p>4 Q. And what does that involve?</p> <p>5 A. DOT pipeline inspection, that type work.</p> <p>6 Construction inspection.</p> <p>7 Q. Okay. And are you familiar with the United</p> <p>8 Steel Workers?</p> <p>9 A. Yes.</p> <p>10 Q. And are you familiar with the election that</p> <p>11 took place in --</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Now, at any point during the</p> <p>14 campaign -- are you familiar with Mr. Rick Taylor,</p> <p>15 Mr. John Mitchell, and Mr. Brian Wedge?</p> <p>16 A. Yes.</p> <p>17 Q. And who are they?</p> <p>18 A. Staff for United Steel.</p> <p>19 Q. At any point during the election campaign,</p> <p>20 did any of them instruct you or encourage you to keep a</p> <p>21 list of employees who voted during the election?</p> <p>22 A. No.</p> <p>23 Q. To take a picture of your ballot?</p> <p>24 A. No.</p> <p>25 Q. To share a picture of your ballot?</p>

<p style="text-align: right;">Page 81</p> <p>1 A. No.</p> <p>2 Q. Did you ever hear them say that to anybody</p> <p>3 else?</p> <p>4 A. No.</p> <p>5 Q. Okay. And you voted during the election?</p> <p>6 A. Yes.</p> <p>7 Q. And did you take a picture of your ballot?</p> <p>8 A. Yes.</p> <p>9 Q. And can you explain why you did that?</p> <p>10 A. Based on our last election, we had -- it was</p> <p>11 a terrible election. We had seventeen "Yes" votes, but</p> <p>12 everybody we talked to voted "Yes" after the fact. So it</p> <p>13 was personal proof that I voted "Yes" for my own benefit.</p> <p>14 Q. Okay. And did you ever -- during the</p> <p>15 election, did you ever tell anybody -- or ever tell</p> <p>16 anybody how you voted?</p> <p>17 A. I think the only person I discussed this with</p> <p>18 was Freddie Watts.</p> <p>19 Q. Freddie Watts? And he's a coworker?</p> <p>20 A. Yes.</p> <p>21 Q. And what did you discuss with him?</p> <p>22 A. Well, we thought, "Well, we'll just have a</p> <p>23 picture for proof that if we needed it." We can say,</p> <p>24 "This is how we voted, and this is" --</p> <p>25 Q. Do you recall --</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Do you recall whether you looked at</p> <p>2 Mr. Watts's picture?</p> <p>3 A. No. I do not recall.</p> <p>4 Q. Are you certain he took one?</p> <p>5 A. Not really.</p> <p>6 MR. MANZOLILLO: Okay. I have nothing</p> <p>7 further.</p> <p>8 HEARING OFFICER DUFFEY: Cross-examination?</p> <p>9 MR. HAMMETT: Nothing.</p> <p>10 HEARING OFFICER DUFFEY: Okay. Mr. Brashear,</p> <p>11 I just caution you not to discuss your testimony with any</p> <p>12 witnesses or potential witnesses. Thank you, very much.</p> <p>13 MR. MANZOLILLO: Give me a minute. I think</p> <p>14 we may be done.</p> <p>15 HEARING OFFICER DUFFEY: Okay.</p> <p>16 (A recess was taken at 10:58 a.m., after</p> <p>17 which the proceedings were resumed at 11:00 a.m. as</p> <p>18 follows.)</p> <p>19 MR. MANZOLILLO: The Union at this point</p> <p>20 rests this case, pending any counter involved.</p> <p>21 HEARING OFFICER DUFFEY: Okay. Any rebuttal</p> <p>22 witnesses for the Employer?</p> <p>23 MR. HAMMETT: No rebuttal witnesses.</p> <p>24 HEARING OFFICER DUFFEY: Okay. Let's go off</p> <p>25 the record for a second.</p>
<p style="text-align: right;">Page 82</p> <p>1 A. It was just basically a -- just for our own</p> <p>2 benefit that if we ended up losing this election like we</p> <p>3 did the last one, that everybody can't come in, all one</p> <p>4 hundred twenty-six, and say, "Yes. We voted for it."</p> <p>5 Q. Did you end up sharing your picture with</p> <p>6 anybody?</p> <p>7 A. No.</p> <p>8 Q. Did you tell anybody else that you took the</p> <p>9 picture other than Mr. Watts?</p> <p>10 A. No.</p> <p>11 Q. Did anybody share any pictures with you?</p> <p>12 A. No. No one shared a picture with me.</p> <p>13 Q. To your knowledge, was a list of employees</p> <p>14 kept --</p> <p>15 A. No.</p> <p>16 Q. Was there a compilation of pictures?</p> <p>17 A. No.</p> <p>18 Q. You never texted or sent your picture to --</p> <p>19 A. No.</p> <p>20 Q. -- anybody else?</p> <p>21 HEARING OFFICER DUFFEY: Mr. Brashear, if you</p> <p>22 would, just wait for him to finish the question before</p> <p>23 you answer. It will come through a little bit better in</p> <p>24 the transcript. Thank you.</p> <p>25 BY MR. MANZOLILLO:</p>	<p style="text-align: right;">Page 84</p> <p>1 (A discussion was held off the record.)</p> <p>2 HEARING OFFICER DUFFEY: Okay. You said the</p> <p>3 Union had a motion they'd like to make.</p> <p>4 MR. MANZOLILLO: The Union at this point has</p> <p>5 a motion to have the objection dismissed. I believe that</p> <p>6 there's no evidence of any conduct that could've affected</p> <p>7 the outcome of this election.</p> <p>8 HEARING OFFICER DUFFEY: And I'm going to do</p> <p>9 deny that motion at this time, because I do want to go</p> <p>10 back and review the evidence presented in conjunction</p> <p>11 with the applicable case law and make a reasonable</p> <p>12 decision from there.</p> <p>13 The parties have, off the record, indicated</p> <p>14 interest in filing briefs in this matter. So I'm going</p> <p>15 to allow the filing of briefs. I can grant seven days.</p> <p>16 So briefs will be due on July 25th. And those can be</p> <p>17 electronically filed with the Board's efilng system.</p> <p>18 The parties may want to talk to the court</p> <p>19 reporter about ordering an expedited transcript, if they</p> <p>20 want to review that for purposes of final briefs. Other</p> <p>21 than that, anything else from the Employer?</p> <p>22 MR. HAMMETT: Nothing.</p> <p>23 HEARING OFFICER DUFFEY: Anything else from</p> <p>24 the Union?</p> <p>25 MR. MANZOLILLO: No. Your Honor.</p>

HEARING OFFICER DUFFEY: Okay. In that case,
the hearing will be closed.
(The hearing concluded at 11:02 a.m.)

CERTIFICATION

This is to certify that the attached proceedings before
the National Labor Relations Board (NLRB), Region 9, in
the matter of EQT PRODUCTION COMPANY, Case No.
09-RC-220731 at Pikeville, Kentucky, on July 18th, 2018,
was held according to the record, and that this is the
original, complete, and true and accurate transcript that
has been compared to the recording, at the hearing, that
the exhibits are complete and no exhibits received in
evidence or on the rejected exhibit files are missing.

REBECCA PAYTON

BOARD EXHIBITS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No.: 09-RC-220731

EQT PRODUCTION COMPANY
(Subsidiary of EQT Corporation)
Employer

And

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC
Petitioner

Place: Pikeville, KY
Date: 07/18/18

OFFICIAL REPORTERS

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)

Employer
and

Case 09-RC-220731

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

HEARING ON OBJECTIONS
INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

- Board Exhibit O-1(a) Employer's Objections received June 27, 2018.
- O-1(b) Order Directing Hearing and Notice of Hearing on Objections, dated June 29, 2018.
- O-1(c) Affidavit of Service of Board Exhibit O-1(b), dated June 29, 2018.
- O-1(d) Petitioner's Motion for Dismissal of Employer's Objections received June 29, 2018.
- O-1(e) Order Denying Petitioner's Motion for Dismissal, dated July 3, 2018.
- O-1(f) Affidavit of Service of Board Exhibit O-1(e), dated July 3, 2018.
- O-1(g) Order Rescheduling Hearing, dated July 5, 2018.
- O-1(h) Affidavit of Service of Board Exhibit O-1(g), dated July 5, 2018.
- O-1(i) Index and Description of formal Documents.

Board Exhibit O-1(i)

EXHIBIT NO.: BD 1(a-i)

CASE NO.: 09-RC-220731

NO. OF PGS: 20

RECEIVED: X

CASE NAME: EQT CORPORATION

DATE: 07/18/18

REJECTED:

REPORTER: BKY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

**EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)**

Employer

and

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC**

Petitioner

Case 09-RC-220731

**AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING ON OBJECTIONS,
DATED JULY 5, 2018.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on, I served the above-entitled document(s) by e-mail upon the following persons, addressed to them at the following addresses:

Roy Justice , Employee Relations Specialist
EQT Production Company
(Subsidiary of EQT Corporation)
100 EQT Way
Pikeville, KY 41501-7050

J. Richard Hammett , Attorney
700 Louisiana St Ste 3000
Houston, TX 77002-2871

Brad Manzolilo, Organizing Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and
Service Workers International Union,
AFL-CIO, CLC
60 Boulevard of Allies
5 Gateway Center, Room 913
Pittsburgh, PA 15222

July 5, 2018

Date

Yolonda L. Craig, Designated Agent of NLRB

Name

Yolonda L. Craig

/s/ Yolonda L. Craig

Signature

Bd. Ex. 0-1(h)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION).

Employer

and

Case 09-RC-220731

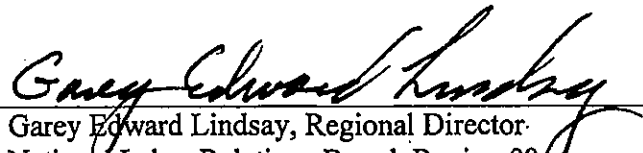
UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC

Petitioner

ORDER RESCHEDULING HEARING ON OBJECTIONS

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from July 12, 2018 at 9:00 AM to 9:00 AM on **Wednesday, July 18, 2018** at the Pike County Judicial Center, Third Floor, Appellate Courtroom, 175 Main Street, Pikeville, KY 41501. The hearing will continue on consecutive days until concluded.

Dated: July 5, 2018


Garey Edward Lindsay, Regional Director
National Labor Relations Board, Region 09
550 Main Street, Room 3003
Cincinnati, OH 45202-3271

Bd Ex. 0-1(9)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)

Employer

and

Case 09-RC-220731

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC

Petitioner

**AFFIDAVIT OF SERVICE OF ORDER DENYING PETITIONER'S MOTION FOR DISMISSAL,
DATED JULY 3, 2018**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on, I served the above-entitled document(s) by e-mail upon the following persons, addressed to them at the following addresses:

Roy Justice, Employee Relations Specialist
EQT Production Company
(Subsidiary of EQT Corporation)
100 EQT Way
Pikeville, KY 41501-7050

J. Richard Hammett, Attorney
700 Louisiana St Ste 3000
Houston, TX 77002-2871

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60 Boulevard of Allies
5 Gateway Center, Room 913
Pittsburgh, PA 15222

July 3, 2018

Date

Yolonda L. Craig, Designated Agent of NLRB

Name

Yolonda L. Craig

/s/ Yolonda L. Craig

Signature

Bd. Ex. 0-1(f)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)

Employer

and

Case 09-RC-2200731

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner


ORDER DENYING PETITIONER'S
MOTION FOR DISMISSAL

On June 29, 2018, after reviewing the Employer's Objections and supporting offer of proof, I issued the *Order Directing Hearing and Notice of Hearing on Objections* in this matter. That same date, Petitioner filed a motion to dismiss the Employer's Objections.

I have concluded that the Employer's Objections and offer of proof raise issues which warrant the conduct of a formal hearing

Accordingly, IT IS HEREBY ORDERED that the Petitioner's motion for dismissal be, and it hereby is, denied.

Dated at Cincinnati, Ohio this 3rd day of July 2018.


Garey E. Lindsay, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Bd. Ex. 0-1(e)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

In the Matter of

EQT PRODUCTION COMPANY (SUBSIDIARY OF
EQT CORPORATION

Employer,

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION
AFL-CIO, CLC

Incumbent Union,

Case No. 9-RC-220731

PETITIONER'S MOTION FOR DISMISSAL OF EMPLOYER'S OBJECTIONS

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC ("Incumbent Union") hereby moves for dismissal of the Employer's Election Objections filed on June 27, 2018 in the above captioned matter. There is no evidence that the Union or any of its agents, including any bargaining unit member who actively supported the Union shared any pictures of ballots or collected any list of employees during the election. Furthermore, there is no evidence that any agent of the Union including any bargaining unit member who actively supported the Union

Bd. Ex. D-1(d)

encouraged their fellow bargaining unit members to take pictures of their ballots or share them with other supporters or that they made any threats to employees about such issues or any other matter related to the election.

While the Union and its agents cannot be certain that no bargaining unit employee took a picture of their own ballot or later decided to share it with a coworker, this would not be grounds for setting aside the election any more than telling a coworker after the election how one voted.


Board law does require the sanctity of the ballot and procedural secrecy of not identifying a voter with a specific physical ballot. There is no Board restriction on individual employees sharing how they voted or on individually taking pictures of their ballots or ultimately of choosing to show another employee a picture of their own ballot. Such restrictions would make it impossible to avoid any election being set aside based on the minor conduct of an individual employee who perhaps disagreed with what they perceived was the likely election outcome.

Instead, such conduct is assessed as third party conduct under the *Milchem* Rule. There is no evidence that any conduct meeting this threshold occurred. Unless the Employer has made an Offer or Proof of such evidence, the Objections should be dismissed.

Counsel for the Employer have been served a copy of this motion via email.

June 29, 2018

Respectfully submitted,



Brad Manzollillo
Organizing Counsel United Steelworkers
60 Boulevard of the Allies Room 913
Pittsburgh, PA 15222
(412) 562-2553
(412) 562-2555 (fax)
bmanzollillo@usw.org

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

EQT PRODUCTION COMPANY (SUBSIDIARY OF
EQT CORPORATION)

Employer.

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

Case 09-RC-220731

**AFFIDAVIT OF SERVICE OF: Order Directing Hearing and Notice of Hearing on
Objections, dated June 29, 2018.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 28, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

J. Richard Hammett, Attorney
700 Louisiana St Ste 3000
Houston, TX 77002-2871
jrichard.hammett@bakermckenzie.com
Fax: (713)427-5099

Roy Justice, Employee Relations Specialist
EQT Production Company (Subsidiary of EQT
Corporation)
100 EQT Way
Pikeville, KY 41501-7050
rjustice@eqt.com

Brad Manzolino, Organizing Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and
Service Workers International Union,
AFL-CIO, CLC
60 Boulevard of Allies
5 Gateway Center, Room 913
Pittsburgh, PA 15222
bmanzolino@usw.org
Fax: (412)562-2555

June 29, 2018

Date

Yolonda L. Craig, Designated Agent of NLRB

Name

Yolonda L. Craig

/s/ Yolonda L. Craig

Signature

Bd. Ex. 0-1(C)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

EQT PRODUCTION COMPANY (SUBSIDIARY OF
EQT CORPORATION)

Employer

and

Case 09-RC-220731

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

ORDER DIRECTING HEARING AND
NOTICE OF HEARING ON OBJECTIONS

Based on a petition filed on May 23, 2018 and pursuant to a Stipulated Election Agreement, an election was conducted on June 21, 2018 to determine whether a unit of employees of EQT Production Company (Subsidiary of EQT Corporation) (the Employer) wish to be represented for purposes of collective bargaining by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the Petitioner). That voting unit consists of:

All full-time and regular part-time Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs I, II and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst, Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior Compressor and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees employed by the Employer at 100 EQT Way, Pikeville, Kentucky 41501 facility, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 126 eligible voters, 62 votes were cast for and 53 votes were cast against the Petitioner, with no challenged ballots. There was also 1 void ballot.

Bd. Ex. 0-1(b)

THE OBJECTIONS

On June 27, 2018, the Employer filed timely objections to conduct affecting the results of the election. A copy of the objections is attached to this Order.

CONCLUSION AND ORDER

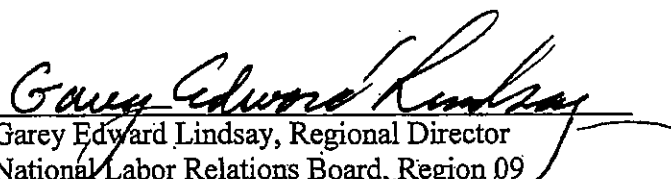
I have concluded that the evidence submitted by the Employer in support of its objections could be grounds for overturning the election if introduced at a hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objections.

NOTICE OF HEARING

Starting at 9:00 a.m. on July 12, 2018 in the Pike County Judicial Center, Third Floor, Appellate Courtroom, 175 Main Street, Pikeville, Kentucky, the hearing on objections as described above will be conducted before a hearing officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated: June 29, 2018


Garey Edward Lindsay, Regional Director
National Labor Relations Board, Region 09
550 Main Street, Room 3003
Cincinnati, Ohio 45202-3271

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION NINE

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED,
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO

and

Case 09-RC-220731

EQT PRODUCTION COMPANY

**EQT PRODUCTION COMPANY'S OBJECTIONS TO CONDUCT OF THE ELECTION
AND CONDUCT AFFECTING RESULTS OF THE ELECTION**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, EQT Production Company ("EQT") files the following Objections to Conduct of the Election and Conduct Affecting the Results of the Election held in the above-captioned matter on June 21, 2018:

1. Contrary to fundamental standards required under the National Labor Relations Act, voter ballots were not kept secret and were shared by employee voters during the course of the election. It is well-established that "[t]he secrecy of the ballot is essential in a Board-conducted election, and it may not be jeopardized." *See Northwest Packing Co.*, 65 NLRB 890, 891 (1946); *accord Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957) ("[I]t is manifestly essential that employees be balloted in a secret election, for the secret ballot is a requisite for a free election."). Despite the mandatory requirement of secrecy, eligible unit voters were instructed to take a photograph of their ballots with their respective camera phones while in the voting booth so that the photograph would serve as evidence that the individual voted "Yes." Eligible unit voters were further instructed to send the photograph of their ballot to at least one union supporter. Of the 116 voters, as many as 61 voters took a picture of their ballot with their

respective cell phones while inside the voting booth and sent the picture to a union supporter, who was collecting the photographs, and thereby also keeping an unlawful list, separate and apart from the official voting list. These actions destroyed the laboratory conditions necessary for an election and intimidated the voters in making their choice, and thereby, affected the outcome of the election. As such, the ballots that were disclosed during the course of the election should be voided. See *Sorenson Lighted Controls*, 286 NLRB No. 108, at 969 (1987) (ballot should be voided when the employee voter disclosed his ballot vote to another voter during the election). Alternatively, the Board should set aside the election because the ballots were not kept secret. See *Columbine Cable Co.*, 351 NLRB No. 65, at 1087-88 (2007). Moreover, it is immaterial as to whether a voter intentionally disclosed his vote or otherwise meant to waive the secrecy of his ballot. See *J. Brenner & Sons, Inc.*, 154 NLRB 656, 659 n.4 (1965) (holding that "to give effect to such a waiver would remove any protection of employees from pressures, originating with either employers or unions, to prove the way in which their ballots had been cast, and thereby detract from the laboratory conditions which the Board strives to maintain in representation elections.").

2. Long-standing labor precedent prohibits the keeping of unofficial lists of persons who have voted in an election. See *Sound Refining Inc.*, 267 NLRB No. 2014, at 1301 (1983). During the June 21, 2018 election, eligible unit voters were instructed to take a photograph of their ballots with their respective camera phones while in the voting booth and send the photographs of their ballot to at least one union supporter. Of the 116 voters, as many as 61 voters took a picture of their ballot with their respective cell phones while inside the voting booth and sent the picture to a union supporter. Through the collection of the photographs, the union supporter compiled an unlawful list of persons who had voted in the election. The list was

separate and apart from the official voting list. Moreover, the eligible voters knew that a list was being kept that recorded their vote. This occurred as each individual voter at issue sent a picture of his ballot to the union supporter. The keeping of the unofficial list of voters by union supporters intimidated voters, interfered with the exercise of voter free choice, and affected the outcome of the election. It therefore warrants the setting aside of the election. See *A.D. Juillard and Co.*, 110 NLRB 2197, 2199 (1954) (holding that the election should be set aside if "it was either affirmatively shown or could be inferred from the circumstances, that the employees knew that their names were being recorded.").

3. Eligible voters were subject to threats and unlawful coercion by union supporters. Before the election, voters were intimidated and instructed by union supporters to take a photograph of their ballots with their respective camera phones so that the photograph would serve as evidence to the union supporter that the individual had voted "Yes," as instructed. Eligible unit voters were further directed to send the photograph of their ballot to the union supporter. Of the 116 voters, as many as 61 voters took a picture of their ballot with their cell phone and sent the picture to a union supporter, who was collecting the photographs, and thereby also keeping an unlawful list. These actions created an atmosphere of fear and reprisal rendering a free election impossible. The actions affected the outcome of the election and the Board should thus invalidate and set aside the election.

WHEREFORE, the Regional Director should set aside the results of the election and direct that a new election be held in which the eligible voters can decide, in an atmosphere free from improper conduct, whether they wish to be represented for purposes of collective bargaining. Further, the actions that occurred are so egregious that there should be a sufficient cooling period before any new election so that a fair election may take place.

Dated: June 27, 2018

Respectfully submitted,

By: /s/ J. Richard Hammett

J. Richard Hammett
Jordan A. Faykus
BAKER MCKENZIE
700 Louisiana, Suite 3000
Houston, Texas 77002
(713) 427-5000
(713) 427-5099 (Fax)

ATTORNEYS FOR
EQT PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Objections to Conduct of the Election and Conduct Affecting Results of the Election on June 27, 2018 upon the following parties using the Agency's website as well as by e-mail and/or Facsimile and certified mail, return receipt requested:

Garey Edward Lindsay, Regional Director
National Labor Relations Board
Region 9
550 Main Street, Room 3003
Cincinnati, OH 45202
Fax: (513) 684-3946

Brad Manzolino
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union,
AFL-CIO, CLC
60 Boulevard of Allies
5 Gateway Center, Room 913
Pittsburgh, PA 15222
bmanzolino@usw.org

/s/ J. Richard Hammett
J. Richard Hammett

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION NINE

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED,
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO

and

Case 09-RC-220731

EQT PRODUCTION COMPANY

**EQT PRODUCTION COMPANY'S OBJECTIONS TO CONDUCT OF THE ELECTION
AND CONDUCT AFFECTING RESULTS OF THE ELECTION**

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Red. Ex. 0-1(a)

respective cell phones while inside the voting booth and sent the picture to a union supporter, who was collecting the photographs, and thereby also keeping an unlawful list, separate and apart from the official voting list. These actions destroyed the laboratory conditions necessary for an election and intimidated the voters in making their choice, and thereby, affected the outcome of the election. As such, the ballots that were disclosed during the course of the election should be voided. See *Sorenson Lighted Controls*, 286 NLRB No. 108, at 969 (1987) (ballot should be voided when the employee voter disclosed his ballot vote to another voter during the election). Alternatively, the Board should set aside the election because the ballots were not kept secret. See *Columbine Cable Co.*, 351 NLRB No. 65, at 1087-88 (2007). Moreover, it is immaterial as to whether a voter intentionally disclosed his vote or otherwise meant to waive the secrecy of his ballot. See *J. Brenner & Sons, Inc.*, 154 NLRB 656, 659 n.4 (1965) (holding that "to give effect to such a waiver would remove any protection of employees from pressures, originating with either employers or unions, to prove the way in which their ballots had been cast, and thereby detract from the laboratory conditions which the Board strives to maintain in representation elections.").

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separate and apart from the official voting list. Moreover, the eligible voters knew that a list was being kept that recorded their vote. This occurred as each individual voter at issue sent a picture of his ballot to the union supporter. The keeping of the unofficial list of voters by union supporters intimidated voters, interfered with the exercise of voter free choice, and affected the outcome of the election. It therefore warrants the setting aside of the election. *See A.D. Juillard and Co.*, 110 NLRB 2197, 2199 (1954) (holding that the election should be set aside if "it was either affirmatively shown or could be inferred from the circumstances, that the employees knew that their names were being recorded.").

3. Eligible voters were subject to threats and unlawful coercion by union supporters. Before the election, voters were intimidated and instructed by union supporters to take a photograph of their ballots with their respective camera phones so that the photograph would serve as evidence to the union supporter that the individual had voted "Yes," as instructed. Eligible unit voters were further directed to send the photograph of their ballot to the union supporter. Of the 116 voters, as many as 61 voters took a picture of their ballot with their cell phone and sent the picture to a union supporter, who was collecting the photographs, and thereby also keeping an unlawful list. These actions created an atmosphere of fear and reprisal rendering a free election impossible. The actions affected the outcome of the election and the Board should thus invalidate and set aside the election.

WHEREFORE, the Regional Director should set aside the results of the election and direct that a new election be held in which the eligible voters can decide, in an atmosphere free from improper conduct, whether they wish to be represented for purposes of collective bargaining. Further, the actions that occurred are so egregious that there should be a sufficient cooling period before any new election so that a fair election may take place.

Dated: June 27, 2018

Respectfully submitted,

By: /s/ J. Richard Hammett

J. Richard Hammett

Jordan A. Faykus

BAKER MCKENZIE

700 Louisiana, Suite 3000

Houston, Texas 77002

(713) 427-5000

(713) 427-5099 (Fax)

ATTORNEYS FOR

EQT PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Objections to Conduct of the Election and Conduct Affecting Results of the Election on June 27, 2018 upon the following parties using the Agency's website as well as by e-mail and/or Facsimile and certified mail, return receipt requested:

Garey Edward Lindsay, Regional Director
National Labor Relations Board
Region 9
550 Main Street, Room 3003
Cincinnati, OH 45202
Fax: (513) 684-3946

Brad Manzolino
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union,
AFL-CIO, CLC
60 Boulevard of Allies
5 Gateway Center, Room 913
Pittsburgh, PA 15222
bmanzolino@usw.org

/s/ J. Richard Hammett

J. Richard Hammett

EMPLOYER EXHIBITS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No.: 09-RC-220731

EQT PRODUCTION COMPANY
(Subsidiary of EQT Corporation)
Employer

And

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC
Petitioner

Place: Pikeville, KY
Date: 07/18/18

OFFICIAL REPORTERS

Veritext National Court Reporters
Mid-Atlantic Region
1250 Eye Street, NW – Suite 350
Washington, DC 20005
888-777-6690



Extraction Report

Apple iPhone Logical

Data Files (2)

Images (2)





#	File Info	Additional file info	Thumbnail	Deleted	*
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EXHIBIT NO.:

CASE NO.: 09-RC-220731

NO. OF PGS:

RECEIVED: X

CASE NAME: EQT CORPORATION

DATE: 07/18/18

REJECTED:

REPORTER: BKY

UNITED STATES OF AMERICA
National Labor Relations Board
09-RC-220731

OFFICIAL SECRET BALLOT

For certain employees of
EQT PRODUCTION COMPANY (SUBSIDIARY OF EQT CORPORATION)

Do you wish to be represented for purposes of collective bargaining by

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO, CLC?**

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES

☒

NO

☐

DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.
If you need this ballot, request it from the Board Agent for a new one.

National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on
this ballot put there by the National Labor Relations Board.

UNITED STATES OF AMERICA
National Labor Relations Board
09-RC-226331

OFFICIAL SECRET BALLOT

For certain employees of
EQT PRODUCTION COMPANY (SUBSIDIARY OF EQT CORPORATION)

Do you wish to be represented for purposes of collective bargaining by

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO, CLCT**

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES



NO



DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.

If you spoil this ballot, return it to the Board Agent for a new one.

National Labor Relations Board does not endorse any choice in this election. Any markings that you may add to
will not be counted by the National Labor Relations Board.



Extraction Report

Apple iPhone Logical

Data Files (2)

Images (2)

#	File Info	Additional file info	Thumbnail	Deleted	*
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UNITED STATES OF AMERICA
National Labor Relations Board

09-RC-220731



OFFICIAL SECRET BALLOT

For certain employees of
EQT PRODUCTION COMPANY (SUBSIDIARY OF EQT CORPORATION)

Do you wish to be represented for purposes of collective bargaining by
UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO, CLC?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES



NO



DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.

If you spoil this ballot, return it to the Board Agent for a new one.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.



UNITED STATES OF AMERICA
National Labor Relations Board

(NLRB Form 70-2)



OFFICIAL SECRET BALLOT

For certain employees of
EQT PRODUCTION COMPANY, DISCOUNT OF EQT CORPORATION.

Do you wish to be represented by persons of collective bargaining by

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO, CLC?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES

☒

NO

☐

DO NOT SHOW THIS BALLOT. Fold and drop in the ballot box.

If you spend this ballot, return it to the Board signed but a new one.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may put on any sample ballot to not have put there by the National Labor Relations Board.

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION NINE

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED,
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO

and

Case 09-RC-220731

EQT CORPORATION

EQT PRODUCTION COMPANY'S POST HEARING BRIEF

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board and by permission of the Hearing Officer, EQT Production Company¹ ("EQT" or the "Company") files this Post Hearing Brief in support of EQT Production Company's Objections to Conduct of the Election and Conduct Affecting Results of the Election.

INTRODUCTION

The June 21, 2018 election has been forever tainted. The undisputed evidence shows that multiple employees photographed their ballots, and thereby destroyed the requisite secrecy of the election. In addition, the evidence also establishes that the photographing of ballots was done as part of a pre-conceived plan to prove who did, and who did not, vote in favor of the Union. According to employee testimony made at the July 18, 2018 hearing on EQT's Objections to Conduct of the Election and Conduct Affecting Results of the Election (the "July 18 Hearing"), employee Union supporters wanted to prevent voters from verbally expressing Union support, while at the same time, actually choosing to vote against Union representation. There is also evidence that an unauthorized list of voters was kept through the collection of 61 pictures of "Yes" votes on an employee's personal cell phone.

¹ On July 18, 2018, Diversified Gas & Oil PLC acquired from EQT Production Company the operations at issue in this matter.

Any of these actions independently would require the setting aside of the election. Not only was the secrecy of the election compromised, but the necessary laboratory conditions and integrity of the election were corrupted. By devising and carrying out the plan to photograph secret ballots, employees created an environment of coercion and reprisal, and eliminated fundamental protections guarding employees from pressure to prove the way in which their ballots had been cast. With the ability to take cell phone pictures of ballots, employees were armed with a weapon that was easily concealed, capable of being wielded at any time, and is proof positive of how an individual voted. These actions completely disrupted the sanctity of the election and eradicated the environment necessary for employee free choice. As such, the June 21 election should be set aside, and a new election should be ordered in which cell phones and other recording devices are prohibited from the voting booth.

FACTS

The facts presented at the July 18, 2018 hearing conclusively establish wrongful conduct that requires the June 21 election to be set aside.

1. The Election.

On June 21, 2018, an election took place from 11:30 a.m. to 1:30 p.m. at the Pike County Public Library to determine whether a group of EQT employees wanted to be represented for purposes of collective bargaining by the Union. Bd. Ex. 0-1(B); Hearing Transcript 27:1-15, 68:5-6. There were 126 eligible voters. Bd. Ex. 0-1(B). After the close of the election, the ballots were officially counted and the tally showed 62 votes for the Union, 53 votes against the Union, and 1 voided ballot. Bd. Ex. 0-1(B). Ten eligible voters did not vote.

2. Mr. Olinger Openly Asserts That He Has 61 Pictures Of "Yes" Votes On His Personal Cell Phone.

Immediately after the close of the election, EQT held a safety meeting, which was attended by several employees and supervisors. Hearing Transcript 15:11-16:5; 27:19-24. Among the various EQT employees at the safety meeting were EQT Production Superintendent Christopher Bailey; EQT Assistant Superintendent of Production David Rhodes; and EQT Pipe Operator and Union supporter James Olinger. Hearing Transcript 17:16-25, 27:19-28:3, 75:14-16. The meeting was schedule to start at 2:00 p.m., but at approximately 1:50 p.m., EQT Safety Director Jordan Pigman came outside and informed the employees that the meeting was going to start early. Hearing Transcript 19:24-20:4, 20:13-15, 29:5-23, 31:19-32:4.

Before the safety meeting started, Mr. Olinger was talking to Mr. Bailey outside of the community center building. Hearing Transcript 17:16-25, 28:8-29:6. In that conversation, Mr. Bailey asked Mr. Olinger how Mr. Olinger thought the vote was going. Hearing Transcript 18:1-9. Mr. Olinger indicated that the Union had won and responded saying, "I've got pictures on my personal cell phone of sixty-one 'Yes' votes." Hearing Transcript 18:17-20. Mr. Rhodes witnessed and overheard the comments from Mr. Olinger. Hearing Transcript 28:17-23. At the July 18 Hearing, Mr. Olinger testified and freely admitted to making the statement to Mr. Bailey before the safety meeting. Hearing Transcript 76:17-19. It was not until approximately 15-20 minutes into the safety meeting that the actual election vote count had been tallied and announced. Hearing Transcript 33:1-21, 61:8-10, 72:11-18.

3. Mr. Brashear Admits That Pictures Of Ballots Were Taken To Prove To Others How Employees Voted.

The morning after the election, on June 22, 2018, several EQT employees and supervisors at the Hazard office were discussing the election and the fact that a ballot was voided and thrown out due to being marked outside of the lines. Hearing Transcript 34:23-36:21.

Included in the discussion was EQT Lead Assistant Superintendent Travis Cooke, EQT Lead Corrosion Technician Randy Brashear, and EQT employee Billy Joe Wells. Hearing Transcript 35:9-22.

Later that morning, Mr. Cooke had another conversation with Mr. Brashear about the voided ballot. Hearing Transcript 36:22-24, 37:8-16. While discussing the voided ballot, Mr. Brashear said, "Well, I know it wasn't me. I took a picture of my ballot, and so did Freddie." Hearing Transcript 37:10-16. Mr. Brashear was referring to EQT Lead Pipeline Operator Freddie Watts. Hearing Transcript 37:17-22.

Mr. Brashear explained that the reason he took the picture of his ballot was to prove that he had voted yes. Hearing Transcript 40:7-16. Mr. Brashear told Mr. Cooke that during the last election there were several people that had said they voted for the union, but there were only a handful of votes actually cast in favor of the union. Hearing Transcript 40:7-16. Mr. Brashear took a picture of his ballot to prove he had voted yes. Hearing Transcript 40:7-16.

At the July 18 Hearing, Mr. Brashear testified and freely admitted to have taken a picture of his ballot. Hearing Transcript 81:7-8. Mr. Brashear referred to the last election as a "terrible election," explaining that "[w]e had seventeen 'Yes' votes, but everybody we talked to voted 'Yes' after the fact." Hearing Transcript 81:7-13. Mr. Brashear testified that to prevent people from claiming after the fact that they voted for the union, when they actually had not, there were discussions and the decision was made to take pictures of ballots. Hearing Transcript 81:14-82:4. Mr. Brashear testified that "if we ended up losing this election like we did the last one, that everybody can't come in, all one hundred twenty-six, and say, "Yes. We voted for it." Hearing Transcript 82:1-4.

4. EQT Conducted A Narrow Investigation To Confirm The Legitimacy Of Reports.

After the June 21 election, EQT Corporate Security received several reports related to voters having taken pictures of their ballots. Hearing Transcript 42:12-24. The Company received reports of employees admitting to have taken photographs of their ballots, observers having observed other employees taking photos while they were in the process of voting, and employees transmitting photographs of other ballots to other employees via their cell phone. Hearing Transcript 43:19-44:4.

After receiving the reports, EQT decided to take a careful approach and confiscate only the two phones belonging to Mr. Brashear and Mr. Watts. Hearing Transcript 44:8-15, 45:2-14. The decision was made to confiscate only their phones since Mr. Brashear was the only employee who had openly admitted that he himself as well as Mr. Watts had taken photographs of their ballots on their EQT Company cell phones. Hearing Transcript 44:8-15, 45:2-14. The purpose of confiscating the phones was to ascertain whether the employees had in fact taken pictures of their ballots. Hearing Transcript 45:9-14.

On June 25, 2018, EQT Corporate Security Manager Kevin Andrews and EQT Senior Director of Operations Maverick Bentley met with Mr. Brashear and Mr. Watts and confiscated their EQT Company iPhones. Hearing Transcript 44:16-23, 45:19-46:20.

When Mr. Brashear and Mr. Watts's phones were later analyzed, it was confirmed that both individuals had taken pictures of their respective ballots. Hearing Transcript 47:23-48:19; EQT Exhibit 1. Mr. Brashear's iPhone contained a picture of his voting ballot in the photograph application of the phone. Hearing Transcript 48:14-19. Mr. Watts's iPhone contained a picture of his voting ballot in the trash of the photograph application. Hearing Transcript 48:14-19. At the July 18 Hearing, a copy of the forensics report was admitted along with copies of the pictures

that Mr. Brashear and Mr. Watts took of their respective ballots. Hearing Transcript 49:11-50:8; EQT Exhibit 1.

Although there was no evidence of the pictures being transmitted via text from Mr. Brashear or Mr. Watts's cell phones, the iPhone technology is designed so that if a message is deleted from the iMessaging application, it is not recoverable. Hearing Transcript 50:9-51:9.

ARGUMENT

1. The Secrecy Of The Election Was Destroyed When Employees Took Photographs Of Their Ballots.

It is well-established that "[t]he secrecy of the ballot is essential in a Board-conducted election, and it may not be jeopardized." *See Northwest Packing Co.*, 65 NLRB 890, 891 (1946). "The Board has long held that '[i]t is of vital importance to the Board's effectuation of the policies of the Act that the regularity of its elections be above reproach. And if the integrity of the Board's election process is to be maintained it is manifestly essential that employees be balloted in a secret election, for the secret ballot is a requisite for a free election.'" *Columbine Cable Co.*, 351 NLRB No. 65, at 1087 (2007) (quoting *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957)). As recognized in the Board's Outline of Law and Procedure in Representation Cases, "[c]omplete secrecy of the ballot is required by the Act and is observed in all Board-conducted elections." NLRB OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES, Section 24-426, *Secrecy of the Ballot*, 370-7750, pg 379 (June 2017) (emphasis added). Indeed, an election must be set aside even where the circumstances only "raise doubts concerning the integrity and secrecy of the election" and "there is no affirmative proof that any person actually saw how the ballots were marked." *See Columbine Cable Co.*, 351 NLRB No. 65, at 1088 (2007); *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957).

In this case, there is no question that employee ballots were not kept secret. The undisputed evidence establishes that at least Mr. Brashear and Mr. Watts took pictures of their ballots. This action is tantamount to taking an identifiable copy of a ballot away from the voting booth, and to do so in a format that may easily be shared, transmitted, and posted in countless different ways. In addition, Union supported James Olinger independently asserted on the day of the election that he had *pictures* of 61 "Yes" votes on his personal cell phone. Although he downplayed his assertion at the July 18 Hearing as a "joke," Mr. Olinger's contemporaneous statement about *pictures of ballots* further calls into question the secrecy of the election, as well as how wide spread the discussion of pictures was.

There is no way to know how far-reaching the unlawful conduct in the instant case actually was. The only way to obtain some certainty about the number of photographed ballots would have required EQT to confiscate every voters' EQT Company cell phone, as well as every voters' personal cell phone. Not only are there cost issues and administrative problems with doing this, as it would require EQT to provide temporary replacement Company phones to the 116 voters, but there are also privacy and other legal considerations with EQT subpoenaing and analyzing personal cell phones. Moreover, by taking such a heavy-handed approach, EQT could have been subject to complaints of retaliation or attempting to determine how individuals voted. Instead, EQT took a reasonable approach and confiscated only Mr. Brashear and Mr. Watts's Company phones - both of which proved to contain photographed ballots.

Moreover, it is immaterial as to whether voters freely chose to take pictures of their ballots and waive the secrecy of their ballots. *See J. Brenner & Sons, Inc.*, 154 NLRB 656, 659 n.4 (1965). As the Board has held, "to give effect to such a waiver would remove any protection of employees from pressures, originating with either employers or unions, to prove the way in

which their ballots had been cast, and thereby detract from the laboratory conditions which the Board strives to maintain in representation elections." *Id.* "It is not material that the fear and disorder may have been created by individual employees and nonemployees and that their conduct cannot be attributed either to the Employer or to the unions. The important fact is that such conditions existed and that a free election was thereby rendered impossible." *Diamond State Poultry Co.*, 107 NLRB 3, 6 (1954). Here, the secrecy of the ballot has been more than just jeopardized. At least two employees, and likely many more, took photographs of their ballots for the purpose of later proving how they had voted. Because complete secrecy was not maintained, and the required laboratory conditions and integrity of the election process was compromised, the June 21 election must be set aside.

2. Mr. Olinger Claimed To Have Kept An Unlawful List Of Employee Votes.

Long-standing precedent prohibits the keeping of unofficial lists of persons who have voted in an election. *See Sound Refining Inc.*, 267 NLRB No. 204, at 1301 (1983), *International Stamping Co.*, 97 NLRB 921, 922-23 (1951). An election must be set aside if "it was either affirmatively shown or could be inferred from the circumstances, that employees knew that their names were being recorded." *See A. D. Juilliard and Co.*, 110 NLRB 2197, 2199 (1954); *Sound Refining Inc.*, 267 NLRB No. 204, at 1301-02 (1983). In cases where an unauthorized list of voters is kept, it is necessary to rerun the election in order to insure a fair, free and non-coerced election. *See Masonic Homes of California, Inc.*, 258 NLRB 41, 48 (1981) ("Impropriety has taken many forms in the cases, and one such is the keeping of lists of voters.").

The undisputed evidence here establishes that on the day of the election, Union supporter James Olinger announced that he had pictures of 61 "Yes" votes on his personal cell phone. Hearing Transcript 18:17-20, 76:17-19. By collecting the pictures of ballots, Mr. Olinger assembled a list of persons who voted. Through his collection and receipt of the pictures, Mr.

Olinger also would have automatically accumulated the corresponding transmission information, either a cell phone number, email address, or other information, that identifies the matching employee voter. This collection of pictures not only amounts to an unauthorized list of persons who voted in the election, it is worse, as it affirmatively identifies *how* each of the individuals voted. Moreover, employees were necessarily aware of the list by their own action of transmitting their picture to Mr. Olinger.

While Mr. Olinger now claims that he was joking, that it was "just an off the wall comment," and that he did not actually have 61 pictures of ballots on his cell phone, in light of all the evidence, this testimony is not credible. First, there is no question that employees did, in fact, take pictures of ballots. Mr. Brashear even testified that the plan to take photographs was pre-conceived, discussed before the election, and done to prove how people voted. Second, Mr. Olinger's statement about *pictures of ballots on his cell phone* is far too specific and unique to simply be an "off the wall comment." The idea of Mr. Olinger making this up independently and at random is preposterous and could not have been a simple coincidence. Third, the number of 61 pictures was nearly dead-on and far too close to the 62 "Yes" votes later determined as the official tally after accounting for the voided ballot. Fourth, at no point did Mr. Olinger present his personal cell phone for examination to disprove that he actually had the 61 pictures of ballots. When analyzed as a whole, Mr. Olinger's testimony simply is not credible. Because the evidence establishes that an unauthorized list of employees who voted in the election was kept, the June 21 election should be set aside and rerun.

3. The Evidence Establishes A Coercive Election Environment Where Employee Free Choice Was Impossible.

Board law establishes that elections must be set aside if the circumstances were such that voters could have been intimidated in casting their vote in a less than secret atmosphere. *Royal*

Lumber Co., 118 NLRB 1015, 1017 (1957); *Imperial Reed & Rattan Furniture Co.*, 118 NLRB 911, 912-13 (1957). Even in situations in which there is no direct evidence that individuals observed how voters cast their ballots, if the voting environment and election circumstances raise doubts concerning the integrity and secrecy of the election, it must be set aside. *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957); *Imperial Reed & Rattan Furniture Co.*, 118 NLRB 911, 912-13 (1957). At least one Board decision has set aside an election after employees were told to take photographs of their ballots. See *Atlas Roll-Off Corp.*, Decision and Direction of Second Election, Case No. 29-RC-114120, at FN 3 (August 6, 2014). In that case, the hearing officer acknowledged that "requiring employees to take a photograph of their ballots to prove how they voted is analogous to chain voting." See *Atlas Roll-Off Corp.*, Hearing Officer's Report and Recommendations on Objections, Case No. 29-RC-114120, at 15 (March 20, 2014).

Here, there is no doubt that an environment existed in which voters covertly took photographs of ballots in order to be able to later expose who did not vote for the Union. At the July 18 Hearing, Mr. Brashear testified that after the last election in which the union lost, a group of union supporters including himself questioned voters to determine who had changed their vote. Hearing Transcript 81:10-13. While everyone they talked to represented that they had voted "Yes," there were only seventeen ballots actually cast in favor of the union. Hearing Transcript 81:10-13. Mr. Brashear testified that was "terrible" and said that he wanted "a picture for proof" so that "if we ended up losing this election like we did the last one, that everybody can't come in, all one hundred twenty-six, and say, 'Yes. We voted for it.'" Hearing Transcript 81:10-82:4.

Further demonstrating the coercive and intimidating atmosphere is the statement of union supporter James Olinger, who admitted under oath that on the day of the election, he openly

claimed to others that he had pictures of 61 "Yes" votes on his personal cell phone. Hearing Transcript 76:17-19. Whether or not his statement was true, Mr. Olinger's assertion in itself is intimidating, and voters could believe, by process of elimination, their vote would later be called into question by Olinger and others. In such an atmosphere, individuals may have been intimidated to vote "Yes," to refrain from voting, or to intentionally cast their ballot in such a way it would be voided. Moreover, even if Mr. Olinger did not have an actual list and pictures of 61 ballots on his cell phone, his statement is far too coincidental and is strong circumstantial evidence that there were, in fact, discussions of lists and discussions of employees taking pictures of ballots, which went well beyond Mr. Brashear and Mr. Watts.

While the Union will undoubtedly try to downplay the atmosphere and argue that the conduct at issue was limited, that argument fails. If voters are allowed to take pictures of their ballots, there is nothing to prevent unions, employers, or employees from coercing individuals to prove how they voted. This is exactly what Mr. Brashear envisioned when he and Mr. Watts, and likely others, decided before the election to photograph their ballots. Hearing Transcript 81:9-82:4. What's more, the pressure and intimidation could be exerted on voters at any time - during the pre-election campaign, as individuals walk into the election, or even after the seven-day deadline to file objections to the election, thereby avoiding any chance that the election would be overturned. Further, and as the case was here, discovering such conduct would be extremely difficult and require an employee to actively come forward and report. Proof would likely be even harder to come by, especially in light of ever-changing technology, much of which is designed to keep information private, unattainable to unauthorized individuals, and non-recoverable after being deleted. The photographs could be shared via disappearing messages on Snapchat, posted to a private Facebook message board, or any number of other ways.

Indeed, these dangers distinguish why the present circumstances of employees taking photographs of their ballots is far worse than employees simply discussing their vote with others (with no physical proof), or employees marking their physical ballot to identify themselves (which can be conclusively discovered at the time of the election).² Not only does the mere act of taking a picture of a ballot destroy the secrecy of the ballot and the election, but in this case, there is clear and conclusive evidence that the reason the pictures were being taken was to create a coercive environment. The hearing testimony established that there was an atmosphere where pictures of ballots were being discussed by employees both before and after the election, and that if the Union had not received a majority vote and/or if the number of votes did not match the number of signed cards, employees would seek to prove who had, in fact, voted in favor of the Union through the pictures of ballots.

Likewise, the Union's "sky is falling" argument that no election would be upheld if they were set aside simply because voters took pictures of their ballots falls flat. Not only does the Union's stance contravene and offend the sanctity of the secret election, but the solution is easy - require voters to check their cell phones before entering the voting booth. However, in this case, it is too late, and the June 21 election is tainted and must be set aside. The undisputed evidence of (1) a pre-conceived scheme discussed among the employees to prove and expose how individuals voted, (2) the forensics confirmation that voters did in fact take photographs of ballots, and (3) the admission that an employee asserted to others to have at least 61 pictures of "Yes" votes, establishes that the election circumstances were such that voters could have been intimidated in casting their vote in a less than secret atmosphere. Because the evidence, at a

² In their June 29, 2018 Petition's Motion for Dismissal of Employer's Objections, the Union argues that the instant "conduct is assessed as third party conduct under the *Milchem* Rule." The Union's attempt to liken this case to that of *Milchem* distorts reality. *Milchem* does not apply, and the undisputed evidence establishes that there was far more taking place here than just conversations with employees waiting to vote.

minimum, raises doubts concerning the integrity and secrecy of the June 21 election, it must be set aside, and a new election should be held in which voters are not allowed to bring cell phones or other recording devices into the voting booth.

WHEREFORE, EQT Production Company's Objections to Conduct of the Election and Conduct Affecting Results of the Election should be sustained, and the results of the June 21 election should be set aside and a new election should be held in which cell phones and other recording devices are not allowed in the voting booth, and thereby the eligible voters can freely decide, in an atmosphere free from improper conduct, whether they wish to be represented for purposes of collective bargaining.

Dated: July 25, 2018

Respectfully submitted,

By: /s/ J. Richard Hammett

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Post Hearing Brief on July 25, 2018 upon the following parties using the Agency's website as well as by email, and/or certified mail, return receipt requested:

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J. Richard Hammett

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

In the Matter of)	
)	
EQT PRODUCTION COMPANY (SUBSIDIARY OF)	
EQT CORPORATION)	
)	
)	Case No. 9-RC-220731
Employer,)	
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL)	
AND SERVICE WORKERS INTERNATIONAL UNION)	
AFL-CIO, CLC)	
Incumbent Union,)	
_____)	

UNION'S POST OBJECTIONS HEARING BRIEF

Respectfully submitted on this
24th day of July, 2018

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INTRODUCTION

On or about May 23, 2018, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC (“Union”) filed a petition for a representation election among all of the Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs, I, II, and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst, Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees at EQT Production Company’s (“Employer”) facility located at 100 EQT Way Pikeville, Kentucky 41501, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act. On June 21, 2018, Region 9 of the National Labor Relations Board (“Region”) conducted a secret ballot election. The reported results were 62 votes for USW representation and 53 votes against USW representation with one voided ballot.

On or about June 28, 2018 the Employer filed Objections to conduct during the critical period before the election under its rights under the National Labor Relations Act (“Act”) and in accordance with Section 102.69 of the National Labor Relations Board’s (“Board”) Rules and Regulations. On July 18, 2018, in Pikeville, Kentucky, the Region conducted an Objections Hearing to determine the merits of the Employer’s objections. The hearing was conducted by Hearing Officer Jonathan Duffey.

During the Hearing, the Employer failed to provide any meaningful evidence supporting its Objections. The USW offers this brief opposing the Employer's Objections and requesting that they be dismissed in their entirety and that the election results be certified with the Union being chosen by a clear majority of employees as their collective bargaining representative.

ISSUE PRESENTED

The Employer failed to meet its burden in establishing that the conduct alleged in its Objections interfered with the free choice of employees to a degree that it has materially affected the outcome of the representation election. Therefore, the elections results should be certified and the Union declared the collective bargaining representative of the employees in the bargaining unit.

STATEMENT OF FACTS

On May 23, 2018, the Union filed a petition for a representation election among workers employed at the Employer's facility located in Pikeville, Kentucky. On June 21, 2018, the Region conducted a secret ballot election. The election was held on June 21 because all bargaining unit employees also had mandatory safety meetings scheduled that day nearby. The first safety meeting ended a half –hour before the voting poll opened and that second meeting started a half-hour after they closed. Employees could attend either one. The election results were 62 votes for USW representation and 53 votes against USW representation.

On June 28, 2018 the Employer filed objections to conduct alleging that Union supporters

engaged in conduct affecting the election results. [Board. Ex. O-1(a)] The alleged conduct included claims that as many as 61 employees took pictures of their marked ballots on cell phones, distributed them to coworkers, one of which compiled a list of all of the yes votes. [Board. Ex. O-1(a)] The Employer further alleged in the Objections that the employees were instructed to take these photos in an intimidating manner and that they were aware the list was being kept. [Board. Ex. O-1(a)]

Despite these allegations, at the Objections Hearing held on July 18, 2018, the Employer presented almost no evidence to support them. The Employer established that two employees took pictures of their ballots with their Company cell phones. [Employer Ex. 1; Tr. p. 81-83] There was, however, no other evidence presented of them sharing the pictures and the record makes clear that only these two employees knew they were taking pictures of their ballots and they never discussed it with anyone else. [Tr. p. 81-83] In fact, it's not even clear they showed each other their pictures or actually knew the other had actually taken a picture. [Tr. p. 81-83]

Despite the Employer having the two employees' phones professionally examined, there was no evidence they had ever been texted or shared with anyone else, which is consistent with the evidence on the record that they were not shared with anyone else. [Tr. p. 51-52; 81-83] Furthermore, no other employees could have seen either of the employees take the pictures of their ballots because the polling area only allowed one voter in the voting room at one time other than the Board Agent and the Observers. [Tr. p. 67-68]

The Employer also failed to produce any real evidence that Union supporters or anyone else kept a record of who voted during the election. The only evidence the Employer presented was a comment made by one employee at a safety meeting in response to a supervisor's question

about the election. When asked what he thought about the election by his supervisor, the employee stated he felt good about it because he had 61 yes voted on it. [Tr. p. 18-19; 76-77]

The Employer contended that other employees heard that statement, but the record makes clear that the conversation took place after the polling area had closed and that nobody could have voted after hearing the comments. [Tr. p. 24-25; 76-77] Furthermore, the record makes clear that the comment was made in jest and that no such list was actually kept and that no other comment of this nature was made prior to the polls closing. [Tr. p. 59-60; 65-66; 76-77; 80-81] The employee came up with the number 61 because that was what the employee organizing committee and the USW organizers roughly estimated the number of supporters to be a couple of weeks before the election. [Tr. p. 77-78]

The rest of the record establishes that while discussions about the representation election took place in the weeks leading up to the election, they never became threatening or intimidating and were, in fact, very civil, mostly just providing information or answering questions. [Tr. p. 58-59; 64-65] There was no discussion of taking pictures of ballots or sharing them or keeping lists and there were no instructions given by agents of the Union or anyone else to take or share pictures of ballots or to keep lists of those voting. [Tr. p. 59-60; 65-66; 77; 80-81]

The Employer simply presented no evidence to support its allegation of objectionable conduct; much less that it materially affected the outcome of the election.

ARGUMENT

The Board looks at several factors in determining whether pre-election conduct should lead to setting aside the election results. These factors include the number of incidents and their

severity; how many bargaining unit members were exposed to the conduct; how likely the conduct was to cause fear among bargaining unit members; how soon the conduct occurred before the election; and the degree to which the conduct persists or sticks out in the minds of bargaining unit employees. *Avis Rent-a-Car System*, 280 NLRB 580, 581 (1986)

The Board must determine not only if misconduct occurred, but whether it, taken as a whole, had a tendency to interfere with employees' freedom of choice and could well have affected the outcome of the election. *Research Found. of State Univ. of N.Y. at Buffalo*, 335 NLRB 959, 952 (2010)

The burden is on the objecting party in an election objections case. The objecting party must demonstrate both that objectionable conduct occurred and that the conduct interfered with employees' ability to make a free choice in a manner that materially affected the results of the election. *Progress Industries*, 285 NLRB 694, 700 (1987)

In the case at hand, the Employer was given the opportunity to present evidence at the Objections Hearing. In the end, the only evidence it produced was that two employees took pictures of their ballots with no evidence they shared them with anyone else, and that an employee made an off-hand, joking comment about having evidence of 61 yes votes on his phone. As admitted by the Employer's own witness, this statement was made after the voting polls closed. The Employer presented no other evidence of the threats, intimidation and coercion it alleged in its Objections.

In other words, at best, the Employer has established that two open Union supporters took pictures of their ballots and may have been aware that they were both doing so. There is no evidence that anyone else was exposed to these pictures. No other conduct occurred before the

election so there is no further analysis needed.

In its Objections, the Employer points to *Sound Refining, Inc.*, where the Board found the keeping of a list of employees who have voted may be grounds for setting aside an election. 267 NLRB No. 2014, at 1301 (1983) The Board, however, will not set aside election results if a list was kept and employees who voted were not aware their names were being recorded. See *Chrill Care, Inc.*, 340 NLRB 1016, 1016 (2003)

This leaves the Employer with two problems relative to this allegation. First of all, the Employer presented zero evidence that such a list was kept in any form, much less that an employee kept a collection of “as many as 61” pictures of ballots. Secondly, the sole offhand comment apparently relied on by the Employer in its allegations took place after the voting polls closed. This is undisputed, even by the Employers’ witnesses. This means it would not be possible for voters to even be under the impression there was a list being kept at any time prior to the conclusion of the election.

In its Objections, the Employer also cites cases indicating the Board’s concern that elections be ‘secret ballot’ elections. See *Sorenson Lighted Controls*, 286 NLRB 108, at 969 (1987). All of the cases cited by the Employer involve something about the actual election ballot being distinguishable. There is no case law indicating that taking a picture of a ballot for one’s own records is objectionable conduct. Again, there is no evidence that the two employees who did take pictures of their ballots disseminated them in any way or ever discussed the potential of taking the pictures with anyone other than each other. Both were supporters of the Union and there is no indication this had any impact on their votes or that they were even certain that the other person actually took the picture.

They were never given any indication they could not take a picture of their ballots, because no such rule exists. They should not be denied their votes being counted, but even in the worst case scenario, if their two ballots were voided, it would not come close to affecting the outcome of the election. A clear majority would have still voted for the USW to be their collective bargaining representative.

Most alarmingly, the Employer seemed to argue in its opening statement at the Objections Hearing that an individual taking a picture of their ballot should be automatic grounds for setting aside election results. This is an absurd position, especially given that there is no evidence either employee was acting in any way as an agent of the Union.


If the Employer's argument were adopted, any employee who was concerned an election outcome might be different than they desire could simply take a picture of their ballot. If they later presented it to an employer or union agent or texted it to another employee without solicitation the Employer apparently contends this should be grounds for setting aside an election. The Board has long-adopted the *Milchem* Rule for assessing third party conduct to ensure such distorted and ridiculous outcomes do not occur. There is certainly no evidence that the conduct of either of these two employees remotely approached this threshold.

In short, the Employer had every opportunity to present evidence at the Objections Hearing supporting its allegations yet failed to do so. Based on the record, the Employer has no plausible argument that there was conduct that could have materially affected the outcome of the election. The Objections should be dismissed in their entirety and the election results certified.

CONCLUSION

For the foregoing reasons, the Union requests that the National Labor Relations Board certify the June 21, 2018 election results. The Union further requests that the National Labor Relations Board certify the Union as the collective bargaining representative of the bargaining unit of Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs, I, II, and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst, Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees at EQT Production Company's ("Employer") facility located at 100 EQT Way Pikeville, Kentucky 41501, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 24th day of July, 2018, I caused the foregoing to be filed electronically with the National Labor Relations Board and a copy of the same to be served by email on the following parties of record:

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Brad Manzolillo

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

**EQT PRODUCTION COMPANY (SUBSIDIARY
OF EQT CORPORATION)**

Employer

and

Case 09-RC-220731

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC**

Petitioner

HEARING OFFICER'S REPORT ON OBJECTIONS

On June 21, 2018 an agent of Region 09 conducted an election among certain employees of the Employer. A majority of employees casting ballots in the election voted in favor of representation by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (Union or Petitioner). However, EQT Production Company (Subsidiary of EQT Corporation) (Employer) contests the results of the election claiming that employee supporters of the Union engaged in conduct warranting setting aside the election and conducting a new election. Specifically, the Employer contends that a supporter of the Union instructed eligible voters to photograph their marked ballots in the voting booth as evidence that they voted yes and then send the photographs to him and that certain voters did photograph their marked ballots. The Employer also contends that photographs of marked ballots were used to maintain an unofficial list of which employees had voted in the election. Finally, the Employer contends that eligible voters were subject to threats and unlawful coercion by union supporters in order to obtain photographs of their completed ballots.

After conducting the hearing and carefully reviewing the evidence as well as arguments made by the parties, I recommend that the Employer's objections be overruled because the evidence is insufficient to show that the Union or any third parties engaged in objectionable conduct. More specifically, the evidence demonstrated that the individuals accused of engaging in objectionable conduct were not agents of the Union and that only one employee photographed his marked ballot. No credible evidence was presented that this employee was encouraged to photograph his ballot by the Union. Further, no credible evidence was presented that this employee shared the pictures of his marked ballot with the Union. Although an employee made a statement about having pictures of marked ballots on his phone, there was no evidence that he actually had such pictures and no evidence that his statement in any way influenced the results of the election. There was no credible evidence that the Union or anyone else maintained an unofficial list of which employees had voted. Finally, there was no evidence presented that any employees were threatened or unlawfully coerced to take photographs of their marked ballots.

After recounting the procedural history, I discuss the parties' burdens and the Board's standard for setting aside elections. Then I describe the Employer's operation and an overview of relevant facts. Finally, I discuss each objection.

PROCEDURAL HISTORY

The Union filed the petition on May 23, 2018. The parties agreed to the terms of an election and the Region approved their agreement on May 31, 2018. The election was held on June 21, 2018. The employees in the following unit voted on whether they wished to be represented by the Union:

All full-time and regular part-time Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs I, II and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst, Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior Compressor and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees employed by the Employer at 100 EQT Way, Pikeville, Kentucky 41501 facility, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

The ballots were counted and a tally of ballots was provided to the parties. The tally of ballots shows that 62 ballots were cast for the Union, and that 53 ballots were cast against representation by the Union. There were no challenged ballots. Thus, a majority of the valid ballots were cast in favor of representation by the Union.

Objections were timely filed. The Regional Director for Region 09 ordered that a hearing be conducted to give the parties an opportunity to present evidence regarding the objections. As the hearing officer designated to conduct the hearing and to recommend to the Regional Director whether the Employer's objections are warranted, I heard testimony and received into evidence relevant documents on July 18, 2018. The parties were permitted to file briefs and both the Union and Employer filed briefs that have been fully considered.

THE BURDEN OF PROOF AND THE BOARD'S STANDARD FOR ESTABLISHING AGENCY STATUS

Legal Standard for Agency Status

The burden of proving an agency relationship rests with the party asserting its existence, both as to the existence of the relationship and as to the nature and extent of the agent's authority. *Millard Processing Services*, 304 NLRB 770, 771 (1991); *Sunset Line & Twine Co.*, 79 NLRB 1487, 1508 (1948). The agency relationship must be established with regard to the specific conduct that is alleged to be unlawful. *Pan-Oston Co.*, 336 NLRB 305, 306 (2001). An

individual can be a party's agent if the individual has either actual or apparent authority to act on behalf of the party. Agency is not established merely on the basis that employees are engaged in "vocal and active union support." *United Builders Supply Co.*, 287 NLRB 1364, 1365 (1988); see also *Tuf-Flex Glass v. NLRB*, 715 F.2d 291, 296 (7th Cir. 1983). Attending organizing meetings or soliciting cards on behalf of a union do not, standing alone, render employees agents of a union. *Health Care and Retirement Corporation of America v. NLRB*, 255 F.3d 276 (6th Cir. 2000). Employee members of an in-plant organizing committee are not, simply by virtue of such membership, agents of the Union. *Advance Products. Corp.*, 304 NLRB 436 (1991); *Health Care and Retirement Corporation of America v. NLRB*, 255 F.3d 276 (6th Cir. 2000).

As further discussed below, I conclude that the individuals who engaged in the alleged objectionable conduct are not agents of the Union and that the alleged objectionable conduct is not attributable to the Union. Therefore, I examine the alleged objectionable conduct using the Board's standards for third-party conduct. *Cornell Forge Co.*, 339 NLRB 733 (2003).

Record Evidence

James Olinger is a pipeline operator who has worked for the Employer for 33 years. On June 21, 2018, the day of the election at issue in this matter, Production Superintendent Chris Bailey asked Olinger how it was going with regard to the election. Olinger replied that it was going well and that he had pictures of 61 yes votes, while motioning to his personal cellphone. At the hearing of this matter, Olinger testified that he was just joking with Bailey when he made this statement and that he did not actually have any pictures of marked ballots on his cellphone. Olinger also testified that he did not tell anyone else that he had pictures of marked ballots. I found Olinger to be a credible witness. In this regard he readily and forthrightly answered all questions posed to him on both direct and cross-examination.

Randall Brashear is a lead corrosion technician who has worked for the Employer for 33 years. Brashear testified that he took a photograph of his marked ballot. Brashear testified that in a prior Board election, several employees claimed to have voted "yes" for union representation, but the results suggested otherwise. Brashear testified that he wanted to have a record of his "yes" vote. Brashear testified that none of the Union's organizers suggested that he photograph his ballot and that he came up with the idea on his own. Brashear credibly testified that he told fellow employee Freddy Watts that he had photographed his ballot, but did not tell anyone else. Likewise, Brashear credibly testified that no other employees shared photographs of their ballots with him and that, to his knowledge, no list of votes was compiled. I found Brashear to be a credible and forthright witness.

Union Organizer Rick Taylor was involved in the effort to organize the Employer. Taylor credibly testified that he did not instruct anyone to photograph a ballot, share a photograph of a ballot, or otherwise maintain a list of voters who had cast ballots. Taylor testified that he was unaware of anyone issuing such instructions, of ballots being photographed, or of any list of who had voted being kept. I found Taylor to be a credible witness and noted his demeanor to be forthright.

James Maynard testified at the hearing that he was a leading employee activist on behalf of the Union during the campaign. Maynard testified that none of the Union organizers instructed employees to photograph their ballots, share photographs of their ballots, or maintain a list of who had voted. Maynard also testified that he was not aware of any employees engaging in this conduct. I found Maynard to be a credible and forthright witness.

Jason Stewart testified that he was an employee activist on behalf of the Union and served as the Union's observer during the election. Like Maynard, Stewart credibly testified that none of the Union organizers instructed them to photograph their ballots, share photographs of the ballots or maintain a list of who had voted. In observing his demeanor on the witness stand, I found Stewart to be a forthright and credible witness.

Recommendation

No evidence was presented that Olinger was acting as an agent of the Union when he made his statement about having pictures of marked ballots. Olinger is not an official of the Union and appears to have been, at most, an employee supporter of the Union. Similarly, no evidence was presented that Randall Brashear was acting as an agent of the Union when he photographed his ballot. Like Olinger, the evidence established that Brashear was merely an employee supporter of the Union. Organizer Taylor credibly testified that no one was instructed by the Union to photograph ballots or to maintain any kind of list of employees who had voted. Employees Maynard and Stewart, leading supporters of the Union, likewise testified that they were not given any instructions by the Union to photograph ballots or maintain a list of which employees had voted. Although it is unclear whether the Employer contends that Olinger or Brashear were acting as agents of the Union when they engaged in the alleged objectionable conduct, I conclude that the Employer, who bears the burden of proof, has failed to establish that employees could reasonably conclude that Jimmy Olinger or Randall Brahsear were acting on behalf of the Union when they engaged in the conduct at issue in this matter. Therefore, in considering the objections, I will apply the third-party standard.

THE EMPLOYER'S OPERATION

The Employer produces and gathers natural gas and oil at various locations throughout the United States, including the facility at issue here in Pikeville, Kentucky. There are two work groups in the bargaining unit -- one out of the Employer's regional headquarters in Pikeville and the other out of a field office in Hazard, Kentucky.

THE EMPLOYER'S OBJECTIONS AND MY RECOMMENDATIONS

The order directing hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. Credibility resolutions are based on my

observations of the testimony and demeanor of witnesses and are more fully discussed within the context of the objection related to the witnesses' testimony.

Objection 1: Eligible voters were instructed to photograph their completed ballots in the voting booth and send the photograph to a union supporter, thus violating requirements that ballots be kept secret.

Record Evidence

Production Superintendent Chris Bailey testified that on June 21, 2018, the day of the election, an employee safety meeting was scheduled to be held at 2:00 p.m. at a local community center. Bailey testified that outside of the meeting place, prior to its start time, he encountered an employee named James "Jimmy" Olinger. Bailey testified that he asked Olinger how the election was going and that Olinger responded that it was going well. Bailey credibly testified that Olinger then reached into his pocket and stated that he had pictures of 61 yes votes on his personal cellphone.^{1/} Although Olinger was accompanied by a couple of other employees when the conversation began, to Bailey's knowledge, no one else was present when Olinger made the statement about having pictures of yes votes. Assistant Superintendent of Production David Rhodes testified that he was within earshot of the conversation and overheard Olinger telling Bailey that he had photographs of 61 yes votes. Rhodes testified that a pipeline operator named Bobby Whitaker was in the area when this statement was made, but there is no evidence as to whether Whitaker heard the statement. Rhodes testified that another person was in the vicinity as well, but he could not recall who this person was. It is unclear whether this person was a member of the bargaining unit and, in any event, no evidence was presented that this person heard Olinger's statement. Although there are some differing accounts as to when exactly this conversation took place, it appears uncontradicted that at the time of the conversation, the voting was over^{2/}, but the election results were not known by either Bailey or Olinger. Following the conversation, Bailey reported what Olinger had said to his superiors in management. I found both Bailey and Rhodes to be credible witnesses.

James Olinger testified at the hearing and acknowledged telling Bailey that he had pictures of 61 votes on his cellphone. Olinger testified that he intended the statement as a joke, or "jab" at Bailey and that he did not actually have pictures of ballots on his phone and had not otherwise tracked who had voted. Olinger also testified that he did not tell anyone else that he had pictures of ballots on his phone. Olinger testified that he came up with the number 61 because he had heard this number given as an estimate for the number of union supporters at a union rally. On cross-examination, Olinger testified that he was not aware of anyone taking pictures of their ballots. I found Olinger to be a credible witness who readily responded to questions from both the Union's attorney and the Employer's attorney in an open and forthright manner.

^{1/} The Employer issues cellphones to a substantial number of its employees, but according to Bailey's testimony, Olinger was not, apparently, referring to an Employer issued cellphone.

^{2/} The polls closed at 1:30 p.m.

Lead Assistant Superintendent Travis Cook testified that on June 22, the day after the election, he overheard employees Billy Joe Wells and Randy Brashear engaging in a conversation with several other employees about the election, particularly about a ballot that had been voided because the voter marked outside the lines. Cook testified that he and Brashear later spoke in Cook's office, outside the presence of any others, and that Brashear asked questions about how the bargaining process worked. Cook testified that, during this conversation, Brashear stated that he was certain that neither he nor co-worker Freddie Watts was responsible for the voided ballot since they both took photographs of their ballots. Cook testified that Brashear explained that he took a picture of his ballot because the last time a union election was held, more people claimed to have voted "yes" than could have done so given the results, and Brashear wanted to be able to prove how he voted. Cook reported this conversation to his superiors who, in turn, reported it to the Employer's Corporate Security Manager, Kevin Andrews. I found Cook to be a credible witness.

Andrews confiscated the Employer issued phones of Brashear and Watts and obtained their passwords. Andrews later proceeded to "unlock" and look at the phones. Andrews testified that on Brashear's phone, he saw a picture of a marked ballot, but that he did not see any pictures of marked ballots on Watts' phone. Andrews sent the phones to a forensic company called Bit By Bit to be examined. Andrews testified that Bit By Bit confirmed the presence of a marked ballot on Brashear's phone and reported that they found a copy of a marked ballot on Watts' phone in the "trash." The Bit By Bit report was introduced into evidence as Employer Exhibit 1. It includes images of marked ballots, and an indication that one of the marked ballots was found in the "trash." There is nothing on the report that attributes the marked ballots to Brashear, Watts or any other employee by name. No one from Bit By Bit testified at the hearing about how the report was produced. Andrews testified that no text messages were found indicating that the pictures of the marked ballots had been sent to anyone. Andrews testified that it is possible to delete text messages from the company issued phones and that, once deleted, they cannot be recovered. I found Andrews to be a credible witness, but since he did not personally see a photograph of a marked ballot on Watts' phone, my favorable conclusion about his credibility has no impact on my findings regarding whether the evidence demonstrated that Watts photographed his marked ballot.

Randall Brashear testified that he did, indeed, take a photograph of his marked ballot. Brashear testified that in a prior Board election, several employees claimed to have voted "yes" for union representation, but the results suggested otherwise. Brashear testified that he wanted to have a record of his "yes" vote and that he discussed this with co-worker, Watts, who planned to do the same. Brashear testified that none of the Union's organizers suggested that he photograph his ballot and that he came up with the idea on his own. Brashear credibly testified that he told fellow employee Freddy Watts that he had photographed his ballot, but did not tell anyone else. Likewise, Brashear credibly testified that no other employees shared photographs of their ballots with him and that, to his knowledge, no list of votes was compiled. I found Brashear to be a credible and forthright witness who readily answered all questions posed to him with an honest demeanor.

Union Organizer Rick Taylor was involved in the effort to unionize the Employer. Taylor credibly testified that he did not instruct anyone to photograph a ballot, share a photograph of a ballot, or otherwise maintain a list of voters who had cast ballots. Taylor testified that he was unaware of anyone issuing such instructions, of ballots being photographed, or of any list of who had voted being kept. I found Taylor to be a credible witness and noted his demeanor to be forthright and honest.

James Maynard testified at the hearing that he was a leading employee activist on behalf of the Union during the campaign. Maynard testified that he never heard any of the Union organizers instruct employees to photograph their ballots, share photographs of their ballots, or maintain a list of who had voted. Maynard also testified that he was not aware of any employees engaging in this conduct. I found Maynard to be a credible and forthright witness.

Jason Stewart testified that he was an employee activist on behalf of the Union and served as the Union's observer during the election. Like Maynard, Stewart credibly testified that none of the Union organizers instructed the employees to photograph their ballots, share photographs of the ballots or maintain a list of who had voted. Stewart testified that he was unaware of any employees engaging in this behavior and that in his time serving as the Union's observer at the election, he was unaware of anyone photographing their ballot. I found Stewart to be a forthright and credible witness who readily answered all questions posed to him.

Board Law

The Board will not set aside an election based on third-party threats unless the objecting party proves that the conduct was "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). In *PPG Indus.*, 350 NLRB 225 (2007), the Board recited its standards for assessing the impact of third party conduct on a Board election. The Board stated that it will review: 1. The nature of the conduct; 2. Whether the conduct encompassed the entire bargaining unit; 3. Whether reports of the conduct were widely disseminated in the unit; 4. Whether a person making threats was capable of carrying out the threats and whether it is likely that the employees acted in fear of his capability; and 5. Whether any threat was "rejuvenated" at or near the time of the election.

The Board has a longstanding policy of voiding ballots which reveal the identity of the voter, such as when the voter signs his or her ballot. E.g. *J. Brenner & Sons, Inc.*, 154 NLRB 656, 659 fn.4 (1965). In *Columbine Cable Co., Inc.*, 351 NLRB 1087 (2007), the Board invalidated an election where two late arriving voters were permitted to mark their ballots outside the privacy of a voting booth under circumstances where they could have reasonably believed that they were being observed as they voted. In *Sorenson Lighted Controls, Inc.*, 286 NLRB 969 (1987), the Board ruled that a ballot should have been voided when a voter showed the marked ballot to a fellow voter prior to dropping it in the ballot box. The Board also held, however, that the election results in such a situation should only be overturned when the number of ballots improperly revealed was sufficient to affect the result of the election.

Recommendation

As discussed above, I do not find that Olinger was acting as an agent of the Union when he quipped about having pictures of yes votes on his cellphone. Accordingly, I assess this conduct under the third party standard. I find that the nature of the conduct was serious in that Olinger stated that he had photographic evidence of how a large number of employees, presumably within the entire bargaining unit, had voted. On the other hand, there is no credible evidence that this statement, which was made to a manager, was disseminated to a single eligible voter. Although a unit employee named Bobby Whitaker may have been in the vicinity, there is no evidence that he or another unnamed employee in the vicinity heard the statement. Further, the only plausible way that Olinger would have had pictures of marked ballots would be if employees photographed their ballots and sent them to Olinger. Thus, employees who had not done this would have no rational reason to believe that Olinger knew how they voted or had photographs of their ballots. Finally, and significantly, Olinger did not make this statement until after the vote was concluded, thus, even if it had been disseminated, there is no way that Olinger's statement could have influenced how any employees chose to vote. Accordingly, I find that Olinger's statement about having pictures of votes on his cellphone falls well short of the standard necessary for third party conduct to result in the overturning of an election.

The next question presented is whether Olinger's statement to Bailey that he had 61 pictures of yes votes on his personal cellphone constitutes credible evidence that he actually had some number of photographs of marked ballots. Olinger testified that his statement to Bailey was merely a joke or a jab and that he did not actually have pictures of marked ballots on his cellphone. Although it was an odd statement to make, I find no basis in the record or in my observation of Olinger's demeanor to discredit his testimony that he did not actually have any pictures of marked ballots on his cellphones. I am cognizant that Olinger's claim to have 61 yes votes was very close to the actual number of 62 yes votes, but find that the accuracy of his prediction was likely based on effective polling of the Union and its supporters of support among the employees and discussion of this support at a union rally. My conclusions on this issue are bolstered by the credible testimony of Taylor, Maynard and Stewart that they were not aware of any instructions from union officials or employees to photograph ballots or share photographs of ballots. In particular, I find that there were some movement to photograph ballots on a large scale, Maynard and Stewart, as lead employee proponents of the Union, would have known of it. Both Maynard and Stewart testified without equivocation that they were not aware of any such effort.

I next turn to the ballots of Brashear and Watts. Board law clearly emphasizes the importance of the secret ballot to insuring a fair and legitimate election. I recommend that when voters photograph their marked ballots, this places the Board's processes for keeping elections free of corruption and improper influence at grave risk. Unlike merely telling fellow employees how one voted (when the statement could be true or false), taking a picture proves it. Accordingly, applying the reasoning of *Sorenson Lighted Controls, Inc.*, I recommend that Brashear's ballot should have been voided when he photographed it. Like the situation in *Sorenson Controls, Inc.*, however, we are presented with the practical problem that it was

unknown that Brashear had photographed his ballot until after it was placed in the box and comingled with the other ballots. Applying the reasoning of *Sorenson Lighted Controls, Inc.*, I recommend that the voiding of Brashear's ballot does not warrant overturning the results of the election since a single ballot is not enough to change the result of this election.^{3/} I find that *Columbine Cable, supra*, cited by the Employer for the proposition that the election should be overturned, is inapposite here since that case involved a scenario where voters marking their ballots in the open could have concluded that they were being observed as they voted. In the instant case, there is no contention that Brashear's marked ballot could have been observed by any third parties such that the overall integrity of the election would be called into question.

I am less convinced that Watts' ballot should be voided. In this regard, the only evidence that Watts actually photographed his ballot comes from the report from Bit By Bit, Cook's testimony that Brashear told him that Watts photographed his ballot, and Brashear's testimony that the two men planned to photograph their ballots. With regard to the report from Bit By Bit, I note that no one from Bit By Bit testified at the hearing to explain how the report was created or the process involved in searching Watts' Employer issued phone. Further, there is nothing on the report itself tying the picture of the marked ballot to Watts. Although I found Cook to be a credible witness, Brashear's statement to Cook that Watts had reported photographing his ballot clearly constitutes hearsay evidence and I find it to be inherently unreliable. Finally, although Brashear testified that Watts planned to photograph his ballot, the evidence was not conclusive that he actually did so. Thus, I find the evidence insufficient that Watts photographed his marked ballot and conclude that it should not be voided.

Finally, I will analyze whether Brashear's act of telling fellow employee Watts that he had photographed his ballot is objectionable. As there was no evidence presented that Brashear was acting as an agent of the Union when he made this statement, this conduct is analyzed under the third party standard. I do not find this statement, in itself, to be particularly serious inasmuch as a single employee's statement to a fellow employee that he had photographed his marked ballot does nothing to coerce the fellow employee into doing the same. Further, there is no evidence that this statement impacted anyone other than Watts and no evidence that it was disseminated beyond Watts. There was no threat involved in the statement. Accordingly, I find that Brashear's statement to a single employee, Watts, that he had photographed his own marked ballot is not objectionable under the third party standard.

For the foregoing reasons, I recommend that Objection 1 be overruled inasmuch as it was established that only one ballot that should have been voided was counted, and the statements of Olinger and Brashear, analyzed under the Board's third party standard, do not warrant overturning the result of the election.

^{3/} I note that the same result would be reached even if Watts' ballot were voided.

Objection 2: A supporter of the Union utilized photographs of completed ballots to create an unofficial list of the voters who had voted in the election.

Record Evidence

The only evidence offered at the hearing in support of this objection was Olinger's statement to Bailey that he had 61 photographs of yes votes on his personal cellphone (discussed above). Olinger testified without equivocation or contradiction that he did not make this statement to anyone else. As I found above, Olinger credibly testified that this statement to Bailey was merely intended as a joke, and he did not actually have pictures of marked ballots on his cellphone. Although Brashear testified that he photographed his own ballot, there was no evidence that he kept any list of other voters in the election.

Board Law

In *A.D. Juilliard and Co.*, 110 NLRB 2197 (1954), the Board held that the results of an election are invalidated when eligible voters are aware that an unofficial list of voters who have cast ballots is maintained.

Recommendation

As discussed above, it is undisputed that Olinger made the statement in question. Despite this, there is no evidence to contradict Olinger's credible sworn testimony at the hearing of this matter that he did not actually have pictures of marked ballots stored on his phone and that his statement to Bailey was merely intended as a joke. Also, as noted above, there is no credible evidence that anyone other than Bailey, Rhodes and Olinger heard this statement and there is no evidence that it was disseminated to other voters such that they would have believed that an unofficial list of who had voted was being maintained. Indeed, the comment was not made until after the polls had closed. Although Brashear admitted to photographing his ballot, there was no evidence that he kept any list of who had voted. Accordingly, I find no credible evidence, whatsoever, that any unofficial list of voters who had cast ballots was maintained and no evidence that employees would have believed an unofficial list was being maintained at the time they cast their ballots. I recommend that Objection 2 be overruled.

Objection 3: Eligible voters were subject to threats and unlawful coercion by union supporters who intimidated them into sending photographs of completed ballots to the union supporters.

Record Evidence

Brashear testified that he and Watts discussed photographing their ballots to prove how they voted in the event that the Union lost the election. Brashear testified without equivocation, however, that they formulated this plan on their own without any threats or intimidation from union officials or anyone else. Brashear also testified that he was unaware of any other employees photographing their ballots. Employee union activist James Maynard credibly

testified that his interactions with co-workers on the topic of unionization were amicable and that he was unaware of anyone engaging in any kind of threatening behavior. I found Maynard to be a credible and forthright witness who answered questions in an honest and open manner. Like Maynard, employee union activist Stewart also testified that his interactions with co-workers on the subject of unionization were amicable. I found Stewart to be a forthright and credible witness as well.

Recommendation

No evidence was presented at the hearing of this matter that eligible voters were subject to threats or unlawful coercion by union supporters or anyone else. Accordingly, I recommend that Objection 3 be overruled.

CONCLUSION

I recommend that the Employer's objections be overruled in their entirety. The Employer has failed to establish that the conduct alleged in its objections to the election held on **June 21, 2018** reasonably tended to interfere with employee free choice. Therefore, I recommend that an appropriate certification issue.

APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 09 by **August 13, 2018**. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, Region 9, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271.


Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business 4:30 p.m. on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be

EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)
Case 09-RC-220731

submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: July 30, 2018



Jonathan D. Duffey, Hearing Officer
Region 9, John Weld Peck Federal Building
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

CERTIFICATE OF SERVICE

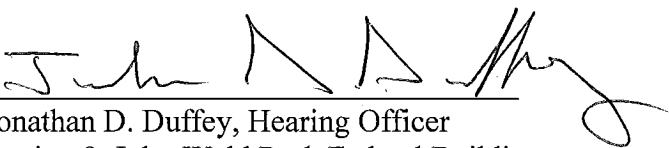
July 30, 2018

I hereby certify that I have served the attached Hearing Officer's Report on Objections on all parties by sending true copies thereof today by e-mail and regular mail on this date to the following:

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION NINE**

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED,
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO**

and

Case 09-RC-220731

EQT CORPORATION

**EQT PRODUCTION COMPANY'S EXCEPTIONS TO
THE HEARING OFFICER'S REPORT ON OBJECTIONS**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, EQT Production Company¹ ("EQT" or the "Company") respectfully submits the following Exceptions to the Hearing Officer's Report on Objections issued on July 30, 2018 in the above-captioned case (the "Report"):

1. Exception is taken to the finding and the conclusion, which is contrary to the record and governing case law, that "the evidence is insufficient to show that the Union or any third parties engaged in objectionable conduct." Report at 1.

As explained in the Company's Post-Hearing Brief and throughout the exceptions listed below, the evidence shows that multiple employees photographed their ballots, that an employee maintained an unauthorized list of voters, and that these activities were part of a pre-conceived plan to prove who did, and who did not, vote in favor of the Union. This conduct compromised the secrecy and integrity of the election, created the potential for coercion and reprisal, and defiled the "laboratory" environment required by law to ensure free, unpressured choice. Under governing Board precedent, such evidence is sufficient to warrant setting aside the election.

¹ On July 18, 2018, Diversified Gas & Oil PLC acquired from EQT Production Company the operations at issue in this matter.

Not only does the Report ignore the clear evidence and controlling precedent, it fails to see the ramifications of allowing this kind of conduct to continue. With the ability to take cell phone pictures of ballots, employees are armed with an easily concealable weapon that can capture and communicate instantly proof positive of how an individual voted. For the Board to allow this election to stand and permit this kind of conduct in the future would be inconsistent with the letter and spirit of the National Labor Relations Act and a great disservice to employers and organized labor across the country.

2. Exception is taken to the finding, which is contrary to the record, that “only one employee photographed his marked ballot.” Report at 1.

As he admitted at the hearing and as the Hearing Office found, just after the election and before the results were known, employee James Olinger (“Olinger”) told two managers that he had pictures on his cell phone of 61 yes votes. Hearing Transcript (“Tr.”) at 12–13, 23–24, 27, 72; Report at 5. The morning after the election, employee Randy Brashear (“Brashear”) told a manager that he and another employee, Freddie Watts (“Watts”), took pictures of their ballots. Tr. 35–37; Report 6. Brashear admitted he took a picture of his ballot. Tr. 81; Report 6. Brashear further explained that the reason he took the picture of his ballot was to prove that he had voted yes because during the last election, many employees said they voted yes but there were only a few actual yes votes. Tr. 40, 81. Brashear actually admitted that there were discussions and the decision was made to take pictures of ballots to prevent people from claiming after the fact that they voted for the union when they actually had not. Tr. 81–82.

Additionally, the Company security officer testified that election observers saw employees taking photographs of their ballots and heard communication between employees about transmitting these photographs to each other. Tr. 43–44. Upon examination, Brashear’s

and Watts' phones contained pictures of marked ballots, and the picture on Watts' phone was in the "Deleted" folder, indicating that he attempted to conceal the fact that he had taken it. Tr. 48–49. In sum, this foregoing evidence indicates that more than one employee photographed his marked ballot.

3. Exception is taken to the finding and conclusion, which is contrary to the record and governing case law, that “[a]lthough an employee made a statement about having pictures of marked ballots on his phone, there was no evidence that he actually had such pictures and no evidence that his statement in any way influenced the results of the election.” Report at 1.

Olinger admittedly told two managers that he had pictures of 61 yes votes on his phone and a few minutes later, the results came down that the union had garnered 62 votes. Report 2, 5. Brashear testified that he and other employees had planned to take photographs of their ballots to later prove how they voted, admitted that he and Watts took pictures of their ballots, and those pictures were actually observed on their phones. *See supra* ¶¶ 1–2. The substantial weight of the evidence completely undermines Olinger's *post hoc* claim that his comment about having 61 ballot pictures was just a joke. It simply is not believable. Further, if witnesses could recant and nullify the effect of their prior statements (particularly statements against interest) just by claiming that they were joking, it would be impossible to conduct an effective, reliable hearing in any context.

4. Exception is taken to the finding, which is contrary to the record, that “[t]here was no credible evidence that the Union or anyone else maintained an unofficial list of which employees had voted.” Report at 1.

See Paragraph 3 above. To say there is “no evidence” that at least Olinger maintained a list is plainly erroneous.

5. Exception is taken to the finding and conclusion, which is contrary to the record and the governing case law, that “there was no evidence presented that any employees were threatened or unlawfully coerced to take photographs of their marked ballots.” Report at 1.

See Paragraph 2 above. Further, Brashear testified that after the last election in which the union lost, a group of union supporters including himself questioned voters to determine who had changed their vote. Tr. 81. While everyone they talked to represented that they had voted yes, there were only seventeen ballots actually cast in favor of the union. Id. Brashear testified that was “terrible” and said that this time, they wanted pictures proving how employees voted so that “if we ended up losing this election like we did the last one . . . everybody can’t come in, all 126, and say yes we voted for it.” Tr. 81–82. Clearly, the purpose of these conversations about taking pictures of ballots and Olinger’s compilation of such pictures was to create a system for holding people accountable for how they voted. Making someone prove how they voted is coercion.

6. Exception is taken to the finding, which is contrary to the record, that the Hearing Officer “found Olinger to be a credible witness.” Report at 3.

See Paragraph 3 above.

7. Exception is taken to the finding, which is contrary to the record, that “Brashear credibly testified that he told fellow employee Freddy Watts that he had photographed his ballot, but did not tell anyone else.” Report at 3, 6.

Taken together, Olinger’s statement that he had pictures of 61 yes votes on his phone, Brashear’s admission that he and other employees planned to take pictures of their ballots to prove how they voted, and the fact that the union garnered 62 votes, strongly imply that Brashear sent the picture of his ballot to Olinger.

8. Exception is taken to the finding, which is contrary to the record, that “Brashear credibly testified that no other employees shared photographs of their ballots with him and that, to his knowledge, no list of votes was compiled.” Report at 3, 6.

See Paragraphs 2–7 above.

9. Exception is taken to the Hearing Officer’s finding that “Brashear [was] a credible and forthright witness.” Report at 3, 6.

See Paragraph 7 above. The substantial evidence undermines Brashear’s testimony that he told no one about photographing his ballot and knew nothing about any compilation of votes. *See supra* ¶¶ 2–7.

10. Exception is taken to the Hearing Officer’s finding that “Olinger [was] a credible witness who readily responded to questions from both the Union’s attorney and the Employer’s attorney in an open and forthright manner.” Report at 5.

See Paragraph 3 above.

11. Exception is taken to the finding that “the only plausible way that Olinger would have had pictures of marked ballots would be if employees photographed their ballots and sent them to Olinger . . . [t]hus, employees who had not done this would have no rational basis to believe that Olinger knew how they voted or had photographs of their ballots.” Report at 8.

Brashear said that the pro-union employees colluded in advance of the election and determined to take pictures of their ballots, and Olinger said he had pictures of 61 of the 62 yes votes. This strongly suggests that Olinger knew exactly how every employee voted, which is completely inconsistent with the idea of secret balloting. Further, even if those employees who voted no did not send pictures of their ballots to Olinger or know about the pro-union employees' preconceived photographing plan, they unwittingly became potential targets of blackballing and other reprisal. And third, to downplay the sheer fact that employees took photos of their ballots—a fact which is undisputed—flies in the face of the law, which puts the highest priority on the secrecy and integrity of union elections. *See Columbine Cable Co.*, 351 NLRB 1087, 1087 (2007) (“The Board has long held that ‘[i]t is of vital importance to the Board’s effectuation of the policies of the Act that the regularity of its elections be above reproach. And if the integrity of the Board’s election process is to be maintained it is manifestly essential that employees be balloted in a secret election, for the secret ballot is a requisite for a free election.’”) (quoting *Royal Lumber Co.*, 118 NLRB 1015, 1017 (1957)); *Northwest Packing Co.*, 65 NLRB 890, 891 (1946) (“The secrecy of the ballot is essential in a Board-conducted election, and it may not be jeopardized.”); NLRB OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES, Section 24-426, *Secrecy of the Ballot*, 370-7750, p. 379 (June 2017) (“Complete secrecy of the ballot is required by the Act and is observed in all Board-conducted elections.”).

12. Exception is taken to the finding and conclusion, which is contrary to the record and governing case law, that “Olinger’s statement about having pictures of votes on his cellphone falls well short of the standard necessary for third party conduct to result in the overturning of an election.” Report at 8.

The Hearing Officer's conclusion misses the mark. There is undisputed evidence that at least two employees took pictures of their ballots as part of a preconceived plan to verify who voted for the union and who did not. This is direct evidence that the election was compromised. But even Olinger's statement, in isolation, is enough to warrant setting aside the election. The Board has held that an election must be set aside even where the circumstances only "raise doubts concerning the integrity and secrecy of the election" and where "there is no affirmative proof that any person actually saw how the ballots were marked." *Columbine Cable*, 351 NLRB at 1088.

13. Exception is taken to the finding, which is contrary to the record, that there is "no basis in the record or in my observation of Olinger's demeanor to discredit his testimony that he did not actually have any pictures of marked ballots on his cellphones." Report at 8.

To say that there is "no basis in the record" to conclude that Olinger had pictures of marked ballots on his phone is clear error, as there is substantial evidence that he did. *See supra* ¶¶ 2-7.

14. Exception is taken to the finding, which is contrary to the record, that "the accuracy of [Olinger's] prediction [of 61 'Yes' votes] was likely based on effective polling of the Union and its supporters of support among the employees and discussion of this support at a union rally." Report at 8.

The only evidence of any "rally" was Olinger's testimony, *on redirect examination by the Union's counsel* in response to the question where he came up with the number 61, that at a "rowdy meeting" with "union guys" a few weeks before, they were "flip-flopping numbers, and the number 61 come [sic] up." Tr. 77-78. There is no evidence of any "polling" in advance of

the present election, much less “effective polling” of all employees that produced a forecast of 61 yes votes. In fact, the only evidence of polling in the record is Brashear’s testimony that they severely overestimated the number of yes votes during the *previous* election. Thus, it seems highly *unlikely* that Olinger and the other attendees of this “rowdy meeting” would have predicted the results of the election with such pinpoint accuracy. But, even assuming Union supporters effectively polled all the employees and received 61 commitments to vote yes, that would not negate the undisputed fact—confirmed by pro-Union employee Brashear—that employees decided to take photos of their ballots to prove how they voted.

15. Exception is taken to the finding, for which there is no support in the record, that if “there were some movement to photograph ballots on a large scale, Maynard and Stewart, as lead employee proponents of the Union, would have known of it.” Report at 8.

This is complete speculation and runs counter to the actual evidence. It is entirely conceivable that pro-Union employees could make a plan to photograph their ballots amongst themselves and without the involvement of Union officials. And indeed, that is exactly what the undisputed evidence shows happened. *See supra* ¶¶ 3–5.

16. Exception is taken to the misapplication of *Sorenson Lighted Controls, Inc.* and conclusion that “[a]pplying the reasoning of *Sorenson Lighted Controls, Inc.*, I recommend that the voiding of Brashear’s ballot does not warrant overturning the results of the election since a single ballot is not enough to change the result of this election.” Report at 9.

Sorenson Controls is informative to the extent it mandates the voiding of Brashear’s and Watts’ ballots. Otherwise, the case is inapposite because the company there was not seeking to overturn the election, but simply to void the ballot in question. *See Sorenson Lighted Controls*,

Inc., 286 NLRB 969, 969 (1987). As a result, the Board in *Sorenson* did not pass on the same question that is raised in this case, that is, whether conduct evidenced in the record warrants the setting aside of the whole election. *Id.* Further, unlike *Sorenson*, which involved one questionable ballot, the evidence in this case calls into question 61 of the yes votes.

17. Exception is taken to the conclusion and recommendation, for which there is no support in the record or governing case law, that “the same result would be reached even if Watts’ ballot were voided.” Report at 9, n. 3.

This conclusion ignores the evidence that there was a plan among pro-Union employees to take and share photographs of their ballots and that Olinger acknowledged having pictures of 61 ballots on his phone. It also ignores the real issue here—the integrity of the entire election and the precedent that would be set for future elections if this behavior is allowed.

18. Exception is taken to the characterization of *Columbine Cable*, and to the conclusion, for which there is no support in the record or governing case law, that “*Columbine Cable* . . . is inapposite here since that case involved a scenario where voters marking their ballots in the open could have concluded that they were being observed as they voted.” Report at 9.

Columbine Cable is directly applicable because it deals with maintaining the secrecy of an election, which is the central issue in this case. In *Columbine Cable*, the Board set aside an election where two late voters voted in conditions in which the election observers and Board agent *could* have seen how they voted. 351 NLRB at 1087–88. There was no evidence that anyone actually saw how the two voters voted. *Id.* Here, there is undisputed evidence that there was a preconceived plan among pro-Union employees to take and share pictures of their ballots, that at least two employees took pictures of their marked ballots and discussed how they voted,

and that a pro-Union employee announced that he had pictures of yes votes on his phone. If the possibility that election observers might have seen how two voters voted was enough to overturn the election in *Columbine Cable*, then the evidence here clearly warrants the same remedial action.

19. Exception is taken to the finding and the conclusion, for which there is no support in the record or governing case law, that “[i]n the instant case, there is no contention that Brashear’s marked ballot could have been observed by any third parties such that the overall integrity of the election would be called into question.” Report at 9.

First, there is evidence that the photograph of Brashear’s ballot was observed by third parties, at the very least, by Watts and Olinger. Second, it is not the potential observation of Brashear’s ballot that is the most concerning issue here, but the undisputed fact that he and others conspired to compile pictures of ballots to hold people accountable for how they voted. The Hearing Officer’s conclusion also fails to appreciate the fact that the mere act of photographing a marked ballot, in and of itself, endangers the secrecy and integrity of an election. Whether or not the employees in this case shared the photographs of their ballots during voting, the Board should not condone taking pictures of ballots under any circumstances due to the dangers such conduct poses to the sanctity of the election process.

20. Exception is taken to the finding, for which there is no support in the record, that “there is nothing on the [Bit By Bit] report itself tying the picture of the marked ballot to Watts.” Report at 9.

It is undisputed that the vendor found a picture of a marked ballot on Watts’ phone (in the trash folder) that had been taken during the voting period, and there is no evidence that Watts took a picture of someone else’s ballot. Tr. 48. No witness testimony contradicts the evidence

that Watts took a picture of his ballot. If that picture was not of Watts' ballot, then it would mean that Watts took a picture of someone else's ballot, which would have been equally, if not more objectionable.

21. Exception is taken to the finding and conclusion that “Brashear’s statement to Cook that Watts had reported photographing his ballot clearly constitutes hearsay evidence and I find it to be inherently unreliable.” Report at 9.

This finding is completely inconsistent with the Hearing Officer's other evidentiary determinations. Olinger's statement that someone threw out the number 61 at a pro-Union meeting weeks before the election is also hearsay, yet the Hearing Officer found that statement credible. The Hearing Officer also inexplicably credited Olinger's after-the-fact recantation of his prior admission that he had pictures of 61 yes votes, despite all the evidence tending to show that the statement was not a joke and despite the utter lack of credibility of that testimony on its face. It is entirely inconsistent to credit this facially suspicious testimony and then find unreliable Cooke's *undisputed* testimony about what Brashear told him.

22. Exception is taken to the finding, which is contrary to the record, that “although Brashear testified that Watts planned to photograph his ballot, the evidence was not conclusive that he actually did so.” Report at 9.

See Paragraph 20 above.

23. Exception is taken to the finding and conclusion, which are contrary to the record and governing case law, that “the evidence insufficient that Watts photographed his marked ballot” and “that [Watts' ballot] should not be voided.” Report at 9.

See Paragraph 20 above.

24. Exception is taken to the finding and conclusion, which is contrary to the record and governing case law, that “Brashear’s statement [to Watts], in itself, [is not] particularly serious inasmuch as a single employee’s statement to a fellow employee that he had photographed his marked ballot does nothing to coerce the fellow employee into doing the same.” Report at 9.

This finding ignores the context provided by the other evidence. Brashear testified that after the last election in which the union lost, a group of union supporters including himself questioned voters to determine who had changed their vote. Tr. 81. While everyone they talked to represented that they had voted yes, there were only seventeen ballots actually cast in favor of the union. Id. Brashear testified that was “terrible” and said that this time, they wanted pictures proving how employees voted so that “if we ended up losing this election like we did the last one . . . everybody can’t come in, all 126, and say yes we voted for it.” Tr. 81–82. Clearly, the purpose of these conversations about taking pictures of ballots, including Brashear’s conversation with Watts, was to create a system for holding people accountable for how they voted.

25. Exception is taken to the finding, which is contrary to the record, that “there is no evidence that this statement impacted anyone other than Watts and no evidence that it was disseminated beyond Watts.” Report at 9.

See Paragraph 24 above.

26. Exception is taken to the finding and conclusion, which is contrary to the record and governing case law, that “[t]here was no threat involved in the statement [by Brashear].” Report at 9.

See Paragraph 24 above.

27. Exception is taken to the finding and conclusion, which is contrary to the record and governing case law, that “Brashear’s statement to a single employee, Watts, that he had photographed his own marked ballot is not objectionable under the third party standard.” Report at 9.

See Paragraphs 3–5, 11, and 24 above.

28. Exception is taken to the recommendation, finding, and conclusion, which is contrary to the record and governing case law, that “Objection 1 be overruled inasmuch as it was established that only one ballot that should have been voided was counted, and the statements of Olinger and Brashear, analyzed under the Board’s third party standard, do not warrant overturning the result of the election.” Report at 9.

The Board has long held that the secrecy of elections is paramount and that where there is any doubt about the complete secrecy of an election, the election must be set aside and a new one conducted. *See Columbine Cable*, 351 NLRB at 1087; *Royal Lumber*, 118 NLRB at 1017; *Northwest Packing*, 65 NLRB at 891. In this case, there is no question that the secrecy of the election was compromised. The undisputed evidence establishes that at least Brashear and Watts took pictures of their ballots pursuant to a preconceived plan among pro-Union employees to retain pictures of their ballots to prove how they voted. In addition, pro-Union employee Olinger independently asserted on the day of the election that he had pictures of 61 yes votes on his personal cell phone. According to Board precedent, such evidence warrants setting aside this election. *See Columbine Cable*, 351 NLRB at 1088; *J. Brenner & Sons, Inc.*, 154 NLRB 656, 659 n.4 (1965) (to allow employees to publicize their ballots would “remove any protection of employees from pressures, originating with either employers or unions, to prove the way in

which their ballots had been cast, and thereby detract from the laboratory conditions which the Board strives to maintain in representation elections”).

Further, the Company could have interrogated and examined the phones of Olinger and all the other employees in order to discover more evidence of inappropriate conduct, but it limited its investigation to the examination of Brashear’s and Watts’ work phones (and found ballot pictures on them) based on Brashear’s admissions, the fact that both Brashear and Watts had only company-issued phones, and out of respect for the employees’ privacy and their right to organize and participate in an election. The Hearing Officer has not only ignored substantial evidence, but has also punished the Company for not being more heavy-handed.

29. Exception is taken to the finding, which is contrary to the record, that regarding the Company’s objection that an unofficial list of voters was maintained, “[t]he only evidence offered at the hearing in support of this objection was Olinger’s statement to Bailey that he had 61 photographs of yes votes on his personal cellphone (discussed above).” Report at 10.

First, Olinger did not present his personal cell phone for examination to disprove that he actually had the 61 pictures of ballots. Second, as explained above, the Company could have, but consciously chose not to search everyone’s phone. Third, as referenced repeatedly above, there is also undisputed evidence that pro-Union employees had a plan to take and share pictures of their ballots to prove how they voted and that the Company found pictures of ballots on the only two phones they searched. Fourth, by collecting the pictures of ballots, Olinger obtained not only an unauthorized list of voters and their contact information, but also affirmative proof of how they voted. The employees who transmitted pictures of their ballots were necessarily aware of Olinger’s list. Fifth, Olinger also testified that the pro-Union employees had a meeting a few

weeks before the election where they tallied 61 yes votes, the same number of ballot pictures Olinger said he had on his phone on the day of the election and just one vote shy of the 62 yes votes that were cast for the Union.

30. Exception is taken to the finding, which is contrary to the record, that “Olinger credibly testified that this statement to Bailey [that Olinger had 61 photographs of yes votes on his personal cellphone] was merely intended as a joke, and he did not actually have pictures of marked ballots on his cellphone.” Report at 10.

See Paragraph 3 above.

31. Exception is taken to the finding, which is contrary to the record, that “there is no evidence to contradict Olinger’s credible sworn testimony at the hearing of this matter that he did not actually have pictures of marked ballots stored on his phone and that his statement to Bailey was merely intended as a joke.” Report at 10.

See Paragraphs 2–5 above.

32. Exception is taken to the finding, which is contrary to the record, that “there is no credible evidence that anyone other than Bailey, Rhodes and Olinger heard this statement and there is no evidence that it was disseminated to other voters such that they would have believed that an unofficial list of who had voted was being maintained.” Report at 10.

There is undisputed evidence that pro-Union employees had a plan to take and share pictures of their ballots to prove how they voted and that the Company found pictures of ballots on the only two phones they searched. By collecting the pictures of ballots, Olinger obtained not only an unauthorized list of voters and their contact information, but also affirmative proof of how they voted. The employees who transmitted pictures of their ballots were necessarily aware

of Olinger's list. Olinger also testified that the pro-Union employees had a meeting a few weeks before the election where they tallied 61 yes votes, the same number of ballot pictures Olinger said he had on his phone on the day of the election and just one vote shy of the 62 yes votes that were cast for the Union. This is substantial evidence that at least 61 employees knew that an unofficial list was being maintained.

33. Exception is taken to the finding, which is contrary to the record, that there was “no credible evidence, whatsoever, that any unofficial list of voters who had cast ballots was maintained and no evidence that employees would have believed an unofficial list was being maintained at the time they cast their ballots.” Report at 10.

See Paragraphs 2–7, 29, and 32 above.

34. Exception is taken to the recommendation, which is contrary to the record and governing case law, that “Objection 2 be overruled.” Report at 10.

The evidence that an unauthorized list was maintained has been exhaustively reiterated above. *See supra* ¶¶ 2–7, 29, and 32. Under the long-standing precedent prohibiting the keeping of unofficial lists of persons who have voted in an election, this evidence warrants setting aside the election in this case. *See Sound Refining Inc.*, 267 NLRB 1301, 1301 (1983); *Masonic Homes of California, Inc.*, 258 NLRB 41, 48 (1981) (“Impropropriety has taken many forms in the cases, and one such is the keeping of lists of voters.”); *A. D. Juilliard and Co.*, 110 NLRB 2197, 2199 (1954) (An election must be set aside if “it was either affirmatively shown or could be inferred from the circumstances, that employees knew that their names were being recorded.”); *International Stamping Co.*, 97 NLRB 921, 922–23 (1951).

35. Exception is taken to the finding and conclusion, which is contrary to the record and governing case law, that “[n]o evidence was presented at the hearing of this

matter that eligible voters were subject to threats or unlawful coercion by union supporters or anyone else.” Report at 11.

See Paragraphs 2–7 and 24 above.

36. Exception is taken to the recommendation, which is contrary to the record and governing case law, that “Objection 3 be overruled.” Report at 11.

The evidence on this point has been exhaustively reiterated above. *See supra* ¶¶ 2–7, 24, 29, 32. Board law establishes that elections must be set aside if the circumstances were such that voters could have been intimidated in casting their vote in a less than secret atmosphere. *Royal Lumber*, 118 NLRB at 1017; *Imperial Reed & Rattan Furniture Co.*, 118 NLRB 911, 912–13 (1957). Even in situations in which there is no direct evidence that individuals observed how voters cast their ballots, if the voting environment and election circumstances raise doubts concerning the integrity and secrecy of the election, it must be set aside. *Id.* At least one Board decision has set aside an election after employees were told to take photographs of their ballots. *See Atlas Roll-Off Corp.*, Decision and Direction of Second Election, Case No. 29-RC-114120, at FN 3 (August 6, 2014); *see also Atlas Roll-Off Corp.*, Hearing Officer’s Report and Recommendations on Objections, Case No. 29-RC-114120, at 15 (March 20, 2014) (holding photographs of ballots to be analogous to chain voting). Applying the controlling precedent to the record evidence in this case, it is clear that the Hearing Officer’s overruling of Objection 3 is erroneous.

37. Exception is taken to the following recommendation and conclusion, which is contrary to the record and the governing case law: that “the Employer’s objections be overruled in their entirety. The Employer has failed to establish that the conduct alleged in its objections to the election held on June 21, 2018 reasonably tended to interfere with

employee free choice. Therefore, I recommend that an appropriate certification issue.”
Report at 11.

The material record evidence and controlling legal authorities are set forth at length above and in EQT’s Post-Hearing Brief. Applying the law to the facts, it is clear that the present election must be set aside.

Crucial policy considerations also compel overturning the election. Complete secrecy of the ballot is a foundational principle of labor relations. Just the act of taking a picture of a ballot compromises secrecy and corrupts the laboratory environment required by law for union elections. More frightening, though, is the fact that if voters are allowed to take pictures of their ballots, there is nothing to prevent unions, employers, or employees from pressuring employees to vote a certain way and coercing them to prove how they voted. Given the nature of technology today, monitoring for such conduct would be extremely difficult, if not impossible. These dangers are real and obvious. But the solution is simple: prohibit employees from bringing cell phones and other recording devices into the voting booth. There is no prejudice to the Company or Union or any other risk in setting aside this election and holding another with a no-device rule in place, and such a remedy would go a long way to protecting the sanctity of the election process.

WHEREFORE, the Hearing Officer’s Report on Objections should be rejected, EQT Production Company’s Objections to Conduct of the Election and Conduct Affecting Results of the Election should be sustained, and the results of the June 21 election should be set aside and a new election should be held in which cell phones and other recording devices are not allowed in the voting booth, and thereby the eligible voters can freely decide, in an atmosphere free from improper conduct, whether they wish to be represented for purposes of collective bargaining.

Dated: August 13, 2018

Respectfully submitted,

By: /s/ Matthew W. Stiles

Matthew W. Stiles

Allen B. ("Josh") Bennett

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ATTORNEYS FOR

EQT PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Exceptions to the Hearing Officer's Report on Objections on August 13, 2018 upon the following parties using the Agency's website as well as by email:

Garey Edward Lindsay, Regional Director
Jonathan Duffey, Hearing Officer
Timothy C. Studer, Board Agent
National Labor Relations Board, Region 9
550 Main Street, Room 3003
Cincinnati, OH 45202

Brad Manzolillo, Organizing Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO,
CLC
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Pittsburgh, PA 15222
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/s/ Matthew Stiles
Of Counsel

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

In the Matter of)	
)	
EQT PRODUCTION COMPANY (SUBSIDIARY OF)	
EQT CORPORATION)	
)	
)	Case No. 9-RC-220731
Employer,)	
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL)	
AND SERVICE WORKERS INTERNATIONAL UNION)	
AFL-CIO, CLC)	
Petitioner Union,)	
_____)	

**PETITIONER UNION’S BRIEF IN RESPONSE TO THE RESPONDENT’S
EXCEPTIONS TO THE HEARING OFFICER’S DECISION**

Respectfully submitted on this
20th day of August, 2018

Brad Manzolillo
Organizing Counsel
United Steelworkers of America
Five Gateway Center
Pittsburgh, PA 1522

INTRODUCTION

On or about May 23, 2018, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC (“Union”) filed a petition for a representation election among all of the Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs, I, II, and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst, Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees at EQT Production Company’s (“Employer”) facility located at 100 EQT Way Pikeville, Kentucky 41501, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act. On June 21, 2018, Region 9 of the National Labor Relations Board (“Region”) conducted a secret ballot election. The reported results were 62 votes for USW representation and 53 votes against USW representation with one voided ballot.

On or about June 28, 2018 the Employer filed Objections to conduct during the critical period before the election under its rights under the National Labor Relations Act (“Act”) and in accordance with Section 102.69 of the National Labor Relations Board’s (“Board”) Rules and Regulations. On July 18, 2018, in Pikeville, Kentucky, the Region conducted an Objections Hearing to determine the merits of the Employer’s objections. The hearing was conducted by Hearing Officer Jonathan Duffey. On July 30, 2018, the Hearing Officer issued his decision

voiding one ballot, but otherwise dismissing the Employer's Objections. On August 13, 2018, the Employer filed Exceptions to the Hearing Officer's decision with the Regional Director.

During the Hearing, the Employer failed to provide any meaningful evidence supporting its Objections. It has raised no new issues in its exceptions and this exercise is clearly nothing more than a frivolous effort to delay certification of the election results and make a mockery of the Board's procedures. The USW offers this brief opposing the Employer's Exceptions and once again requests that the Objections be dismissed in their entirety and that the election results be certified with the Union being chosen by a clear majority of employees as their collective bargaining representative.

ISSUE PRESENTED

1. The Hearing Officers determinations that the Employer failed to establish that a list of employees who voted was kept by the Union or anyone else and that there was also no evidence employees could be under the impression that such a list was being kept were valid and based upon the evidentiary record and Board law.
2. The Hearing Officers determination that the Employer failed to establish that the evidence of one or two employees taking pictures of their ballots was not a valid basis for overturning the elections results employees who voted was valid and based upon the evidentiary record and Board law.

STATEMENT OF FACTS

On May 23, 2018, the Union filed a petition for a representation election among workers employed at the Employer's facility located in Pikeville, Kentucky. On June 21, 2018, the Region conducted a secret ballot election. The election was held on June 21 because all bargaining unit employees also had mandatory safety meetings scheduled that day nearby. The first safety meeting ended a half-hour before the voting poll opened and that second meeting started a half-hour after they closed. Employees could attend either one. The election results were 62 votes for USW representation and 53 votes against USW representation.

On June 28, 2018 the Employer filed objections to conduct alleging that Union supporters engaged in conduct affecting the election results. [Board. Ex. O-1(a)] The alleged conduct included claims that as many as 61 employees took pictures of their marked ballots on cell phones, distributed them to coworkers, one of which compiled a list of all of the yes votes. [Board. Ex. O-1(a)] The Employer further alleged in the Objections that the employees were instructed to take these photos in an intimidating manner and that they were aware the list was being kept. [Board. Ex. O-1(a)]

Despite these allegations, at the Objections Hearing held on July 18, 2018, the Employer presented almost no evidence to support them. The Employer established that two employees took pictures of their ballots with their Company cell phones. [Employer Ex. 1; Tr. p. 81-83] There was, however, no other evidence presented of them sharing the pictures and the record makes clear that only these two employees knew they were taking pictures of their ballots and they never discussed it with anyone else. [Tr. p. 81-83] In fact, it's not even clear they showed each other their pictures or actually knew the other had actually taken a picture. [Tr. p. 81-83]

Despite the Employer having the two employees' phones professionally examined, there was no evidence they had ever been texted or shared with anyone else, which is consistent with the evidence on the record that they were not shared with anyone else. [Tr. p. 51-52; 81-83] Furthermore, no other employees could have seen either of the employees take the pictures of their ballots because the polling area only allowed one voter in the voting room at one time other than the Board Agent and the Observers. [Tr. p. 67-68]

The Employer also failed to produce any real evidence that Union supporters or anyone else kept a record of who voted during the election. The only evidence the Employer presented was a comment made by one employee at a safety meeting in response to a supervisor's question about the election. When asked what he thought about the election by his supervisor, the employee stated he felt good about it because he had 61 yes voted on it. [Tr. p. 18-19; 76-77]

The Employer contended that other employees heard that statement, but the record makes clear that the conversation took place after the polling area had closed and that nobody could have voted after hearing the comments. [Tr. p. 24-25; 76-77] Furthermore, the record makes clear that the comment was made in jest and that no such list was actually kept and that no other comment of this nature was made prior to the polls closing. [Tr. p. 59-60; 65-66; 76-77; 80-81] The employee came up with the number 61 because that was what the employee organizing committee and the USW organizers roughly estimated the number of supporters to be a couple of weeks before the election. [Tr. p. 77-78]

The rest of the record establishes that while discussions about the representation election took place in the weeks leading up to the election, they never became threatening or intimidating and were, in fact, very civil, mostly just providing information or answering questions. [Tr. p. 58-

59; 64-65] There was no discussion of taking pictures of ballots or sharing them or keeping lists and there were no instructions given by agents of the Union or anyone else to take or share pictures of ballots or to keep lists of those voting. [Tr. p. 59-60; 65-66; 77; 80-81]

The Employer also presented no evidence of any agent of the Union involved in any of the limited conduct it alleged.

The Employer simply presented no evidence to support its allegation of objectionable conduct; much less that it materially affected the outcome of the election and the Hearing Officer could reach no other conclusion but to recommend the Objections be dismissed.

ARGUMENT

The Board looks at several factors in determining whether pre-election conduct should lead to setting aside the election results. These factors include the number of incidents and their severity; how many bargaining unit members were exposed to the conduct; how likely the conduct was to cause fear among bargaining unit members; how soon the conduct occurred before the election; and the degree to which the conduct persists or sticks out in the minds of bargaining unit employees. *Avis Rent-a-Car System*, 280 NLRB 580, 581 (1986)

The Board must determine not only if misconduct occurred, but whether it, taken as a whole, had a tendency to interfere with employees' freedom of choice and could well have affected the outcome of the election. *Research Found. of State Univ. of N.Y. at Buffalo*, 335 NLRB 959, 952 (2010).

The burden is on the objecting party in an election objections case. The objecting party

must demonstrate both that objectionable conduct occurred and that the conduct interfered with employees' ability to make a free choice in a manner that materially affected the results of the election. *Progress Industries*, 285 NLRB 694, 700 (1987).

In cases involving third party conduct, the Board will not set aside election results unless the objecting party establishes that conduct took place that was "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984).

- 1. The Hearing Officers determinations that the Employer failed to establish that a list of employees who voted was kept by the Union or anyone else and that there was also no evidence employees could be under the impression that such a list was being kept were valid and based upon the evidentiary record and Board law.**

While the Employer presented very little evidence to support any of its allegations, other than its Exceptions 1 and 37 which are generalized exceptions to the Hearing Officer's findings, the other exceptions can basically be grouped into two categories. The first category are those exceptions dealing with the allegation of a list of employees voting being kept. These Exceptions include 2, 3, 4, 6, 10, 11, 12, 13, 14, 15, 29, 30, 31, 32, 33, 34, 35, and 36.

It must be reiterated that the Employer was given the opportunity to present evidence at the Objections Hearing. In the end, the only evidence it produced was that one or two employees took pictures of their ballots with no evidence they shared them with anyone else, and that an employee made an off-hand, joking comment about having evidence of 61 yes votes on his phone. As admitted by the Employer's own witness, this statement was made after the voting polls closed. Furthermore, these employees were clearly not agents of the Union so there alleged

conduct must be assessed as third party conduct. The Employer presented no other evidence of the threats, intimidation and coercion it alleged in its Objections.

In other words, at best, the Employer has established that two employees took pictures of their ballots and may have been aware that they were both doing so. There is no evidence that anyone else was exposed to these pictures. No other conduct occurred before the election so there is no further analysis needed.

In its Objections, the Employer points to *Sound Refining, Inc.*, where the Board found the keeping of a list of employees who have voted may be grounds for setting aside an election. 267 NLRB No. 2014, at 1301 (1983) The Board, however, will not set aside election results if a list was kept and employees who voted were not aware their names were being recorded. See *Chrill Care, Inc.*, 340 NLRB 1016, 1016 (2003)

This leaves the Employer with two problems relative to this allegation. First of all, the Employer presented zero evidence that such a list was kept in any form, much less that an employee kept a collection of “as many as 61” pictures of ballots. Secondly, the sole offhand comment apparently relied on by the Employer in its allegations took place after the voting polls closed. This is undisputed, even by the Employers’ witnesses. This means it would not be possible for voters to even be under the impression there was a list being kept at any time prior to the conclusion of the election.

Despite the fact that the Employer confiscated two other phones from employees, it never confiscated Olinger’s phone. This is likely because the Employer new that Olinger was joking with a supervisor he knew well after the supervisor interrogated him about his thoughts on the election outcome after the election polls had closed.

Furthermore, beyond this post-election statement by Olinger, the Employer failed to present a single witness who claimed they had been asked to share photos of ballots with Olinger or anyone else or any evidence that anyone had. In fact other than Brashear admitting he and Watts had discussed photographing their own ballots, there was no evidence of any discussion, much less the grand conspiracy to coerce employees into photographing their ballots, texting them to coworkers and then compiling them.

This is because the grand conspiracy is nothing more than the Employer desperately trying to manipulate the Board's election certification procedures to delay as long as possible its bargaining obligation. There is already mounting evidence the Employer is using this opportunity to make unilateral changes to the wages, benefits and working conditions of bargaining unit employees. The fact that the Employer keeps pointing to this one offhand remark made after the election was over as the smoking gun shows both desperation and a boldness in flaunting its disregard for Board law and procedures.

- 2. The Hearing Officers determination that the Employer failed to establish that the evidence of one or two employees taking pictures of their ballots was not a valid basis for overturning the elections results employees who voted was valid and based upon the evidentiary record and Board law.**

The second category of the Employer's exception to the Hearing Officer's decision are those exceptions dealing with findings that one or two employees taking photos of their ballots is not grounds for setting aside election results in a 62 to 53 vote count. These Exceptions include 5, 7, 8, , 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

In its Objections and Exceptions, the Employer cites cases indicating the Board's concern

that elections be 'secret ballot' elections. See *Sorenson Lighted Controls*, 286 NLRB 108, at 969 (1987). All of the cases cited by the Employer involve something about the actual election ballot being distinguishable. There is no case law indicating that taking a picture of a ballot for one's own records is objectionable conduct. Again, there is no evidence that the two employees who did take pictures of their ballots disseminated them in any way or ever discussed the potential of taking the pictures with anyone other than each other. Both were supporters of the Union and there is no indication this had any impact on their votes or that they were even certain that the other person actually took the picture. The only evidence of any discussion comes directly from Brashear and he makes it clear the only person he ever discussed taking photos of the ballot with was Watts.

The Hearing Officer recommended voiding Brashear's ballot. Despite not presenting any direct evidence that Watts had taken a picture of his ballot, the Employer argues his ballot should be voided as well. The Union still believes these two employees should not be denied their votes being counted since they were both supporters to begin with and just had a friendly discussion between themselves about taking a picture of their ballots. However, even in the worst case scenario, if their two ballots were both voided, it would not come close to affecting the outcome of the election. A clear majority would have still voted for the USW to be their collective bargaining representative.

Most alarmingly, the Employer seemed to argue in its opening statement at the Objections Hearing that an individual taking a picture of their ballot should be automatic grounds for setting aside election results. This is an absurd position, especially given that there is no evidence either employee was acting in any way as an agent of the Union or that either employee talked to

anyone else at all about this issue.

The Employer cites *Columbine Cable Co., Inc.* and then takes the ruling in that case out of context. In *Columbine Cable*, the election was decided by one vote and the Board's election procedures for two late arriving voters left the impression the two late voters' ballots were visible to observers and others while they voted. 351 NLRB 1087 (2007). The Board upheld the objections in that case specifically because in theory, those two employees could have felt pressured to vote a certain way because they may have realized others could see them vote. Therefore, if their two votes were voided it could have affected the outcome of the election since it was decided by one vote. Since the ballots were mixed with others and the two votes would have been determinative, the Board reasoned the objections needed to be upheld. *Id.*

In the case at hand, however, even with the two votes voided, the Union would still win the election by seven votes. Furthermore, the un rebutted evidence from the record makes clear that only one employee was allowed in the room where voting took place at a time and the observers could not see the ballots being cast. Therefore, the logic in *Columbine Cable* would not apply.

If the Employer's argument that a single employee taking a picture of their ballot should be grounds for setting aside an election no matter how one-sided the vote, were to be adopted, any employee who was concerned an election outcome might be different than they desire could simply take a picture of their ballot. If they later presented it to an employer or union agent or texted it to another employee without solicitation the Employer apparently contends this should be grounds for setting aside an election. The Board has long-adopted the *Milchem* Rule for assessing third party conduct to ensure such distorted and ridiculous outcomes do not occur.

There is certainly no evidence that the conduct of either of these two employees remotely approached this threshold.

Instead, even if the Board were to find that the facts lead to these two employees having their ballots voided, it would be as clear of an example of a *de minimus* analysis of conduct as one could find. The Board has historically found that where it would have been virtually impossible for alleged conduct to have affected the results of the election, the results will not be overturned. *Bon Appetit Mgmt. Co.*, 334 NLRB 1042, 1044 (2001); *Portola Packaging Inc.*, 361 NLRB No. 147 (Dec 16, 2014). When an election is decided by nine votes, and the only evidence presented by the Employer is that two employees may have been aware each was taking a picture of their ballot, it is not only virtually impossible those two votes could have affected the election results, but it is in fact, impossible.

In short, the Employer had every opportunity to present evidence at the Objections Hearing supporting its allegations yet failed to do so. The Employer seems to rely either on the offhand remark of Olinger after the election or on some perceived telepathic ability of the rest of the bargaining unit to know that Brashear, and possibly Wells, were taking pictures of their ballots. More realistically, the Employer is hoping the Board will overlook the fact that the evidentiary burden was on the Employer to show proof of this conduct, and failed to do so despite having access to 126 bargaining unit employees.

Perhaps the Union should allege that the Employer threatened to fire all of the bargaining unit employees if they voted for the Union. After all, the Union presented as much evidence of this (absolutely nothing) as the Employer presented of a grand conspiracy among voters to take pictures of their ballots and share them on some imaginary list that nobody has ever seen or heard

of.

Based on the record, the Employer has no plausible argument that there was conduct that could have materially affected the outcome of the election. The Employer's Objections and Exceptions to the Hearing Officer's findings should be dismissed in their entirety and the election results certified.

CONCLUSION

For the foregoing reasons, the Union requests that the National Labor Relations Board certify the June 21, 2018 election results. The Union further requests that the National Labor Relations Board certify the Union as the collective bargaining representative of the bargaining unit of Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs, I, II, and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst, Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees at EQT Production Company's ("Employer") facility located at 100 EQT Way Pikeville, Kentucky 41501, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 20th day of August, 2018, I caused the foregoing to be filed electronically with the National Labor Relations Board and a copy of the same to be served by email on the following parties of record:

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Brad Manzollillo

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)

Employer

and

Case 09-RC-220731

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION
AND
CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulated Election Agreement, an election was conducted on Thursday, June 21, 2018 ^{1/}, among the following unit of employees employed by EQT Production Company (Subsidiary of EQT Corporation), herein called the Employer.

All full-time and regular part-time Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs I, II and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst, Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior Compressor and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees employed by the Employer at its 100 EQT Way, Pikeville, Kentucky 41501 facility, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

The tally of ballots showed that of the approximately 126 eligible voters, 62 cast ballots for Petitioner, and 53 cast ballots against representation, with no void or challenged ballots. Thus, a majority of valid ballots were cast in favor of representation by the Petitioner.

The Employer timely filed three objections to the election and pursuant to my direction, a hearing was conducted before a Hearing Officer on July 18 on these objections. On July 30, the Hearing Officer issued a report recommending that I overrule all three objections. The Employer

^{1/} Hereinafter, all dates occurred in 2018 unless otherwise stated.

filed exceptions to the report contending that the Hearing Officer erred in recommending that each objection be overruled. Petitioner filed a brief in opposition to the Employer's exceptions.

I have carefully reviewed the Hearing Officer's rulings made at hearing and find they are free from prejudicial error. After a thorough examination of the entire record of these proceedings, including the exceptions, arguments, and briefs, as discussed below, I agree with the Hearing Officer's recommendation to overrule all of the Employer's objections. Accordingly, I am issuing a Certification of Representative.

I. THE OBJECTIONS

OBJECTION NO. 1

In its first objection, the Employer contends that eligible voters were instructed to photograph their completed ballots in the voting booth and send the photograph to a union supporter, thus violating requirements that ballots be kept secret. This objection relates to a statement made by an employee to the Production Superintendent. The record reflects that on June 21, shortly before a 2 p.m. employee safety meeting at a local community center, but subsequent to the election polls closing at 1:30 p.m., the Production Superintendent asked an employee how the election was going and the employee responded by saying it was going well. The employee reached into his pocket, pulled out his personal cellphone, and said that he had pictures of 61 yes votes. While the employee in question acknowledged making the statement, he testified that he was merely making a joke, and denied having pictures of marked ballots on his cellphone.

The Employer further relies on evidence that at least one employee took a picture of his marked ballot while voting.^{2/} This particular employee testified that while voting, he took a photograph of his marked ballot, and only told one other employee he had taken a picture of his ballot and that he did not share the picture of his marked ballot with anyone, and no other employees shared photographs of marked ballots with him.

Furthermore, there is no evidence in the record that any union agents, supporters, or even any other employees instructed voters to photograph their completed ballots in the voting booth.^{3/} Nor is there evidence that employees were instructed to electronically send pictures of their marked ballots to a union supporter. Furthermore, there is no clear evidence that any

^{2/} The Employer excepts to the Hearing Officer's determination that the record did not support a finding that two employees took pictures of their marked ballots. As will be explained later in this Decision, whether there was one or two employees who took pictures of their marked ballots is irrelevant, as there is insufficient evidence of employees engaging in objectionable conduct, and I therefore do not reach the issue of whether their ballots should be voided.

^{3/} The Employer did not except to the Hearing Officer's finding that the employee who spoke to the Production Superintendent was not acting as an agent of the Union when he made his statement about having pictures of marked ballots on his cellphone.

employee told anyone about photographs while the polls were open, or that any employees knew that an employee had photographed his own ballot prior to voting themselves.

The Employer excepts, on a variety of grounds, to the Hearing Officer's recommendation that Objection 1 should be overruled.^{4/} To begin with, in its exceptions, the Employer argues that "[t]he substantial weight of the evidence completely undermines the employee's *post hoc* claim that his comment about having 61 ballot pictures was just a joke. It simply is not believable." (emphasis in original) It further excepts to the Hearing Officer's finding that "[another employee] credibly testified that he told a fellow employee . . . that he had photographed his ballot, but did not tell anyone else." In so arguing, the Employer excepts to the Hearing Officer's credit of the [employees' testimony on these respective points.] The Employer further excepts to the Hearing Officer's findings that the employees who testified were credible and forthright witnesses. I note that it is well-established Board policy not to overturn a hearing officer's credibility resolutions unless the clear preponderance of all relevant evidence demonstrates that those findings are incorrect. *Independence Residences, Inc.*, 355 NLRB 724 (2010) fn. 1; *Ozark Refining and Casting*, 240 NLRB 475 (1979). I have carefully examined the record and find no evidentiary basis or support for reversing these, or any, credibility resolutions made by the Hearing Officer.

Moreover, the Employer also advances the theory that pro-Union employees hatched a pre-election plan to take photographs of their ballots in order to prove that they, in fact, did vote for the Union. However, the only record evidence related to this point is testimony from one employee that he and another employee spoke amongst themselves about their intention to take a picture of their marked ballot to prove how they voted. There is no evidence supporting the notion that any other employees had the same intention, or that the employees who had photographs shared their plan with other employees. At most, the evidence shows that two employees had a one-on-one conversation about taking pictures of their ballots prior to the election. While the Employer would have me extrapolate from that conversation a finding that the entire pro-Union contingent of employees had a pre-conceived plan to take pictures of their marked ballots and forward those ballots to a fellow union supporter, the record does not support such an inference.

The cases cited by the Employer in support of its objection are inapposite to the instant matter. As correctly noted by the Hearing Officer, in *Columbine Cable Co.*, 351 NLRB 1087 (2007), the Board set aside an election because two voters were allowed to mark their ballots in

^{4/} The Employer's exceptions to the Hearing Officer's report are not grouped by specific objection, and are often interrelated. In reviewing the Employer's first objection and the Hearing Officer's corresponding recommendation, I have considered each exception, interrelated exception and all supporting arguments. I have done the same for objections two and three. Although I have not specifically addressed each exception and argument in this Decision, inasmuch as they are largely interrelated, my findings will explain the reasoning behind my decision to adopt the Hearing Officer's recommendations.

an open environment without the privacy of a voting booth or secluded room. Here, the Hearing Officer properly found that there is no contention or evidence that any voter's marked ballot could have been observed by any third party such that the overall integrity of the election would be called into question.^{5/} Indeed, as the Employer makes reference to in its objections to the election, voting was accomplished in this case through the use of a private voting booth.

The other cases cited by the Employer are equally inapplicable to the instant case. In *Royal Lumber Co.*, 118 NLRB 1015 (1957), a Board-run election was set aside because employees voted in an open lean-to shed which provided little privacy, unlike the voting booth used in this case. *Northwest Packing Co.*, 65 NLRB 890 (1946) involved a mail-ballot election where several ballots were voided due to the ballots being too closely identified with the name of the voter, clearly distinguishable from the instant matter. And, *J. Brenner & Sons, Inc.*, 154 NLRB 656 (1965) involved Board discussion as to whether a Regional Director properly voided a ballot where the employee signed his name to the ballot in an attempt to deliberately waive his right to privacy—again, distinguishable from this case.^{6/}

Based on the foregoing, and for the reasons articulated by the Hearing Officer, I agree that the record evidence as it pertains to the Employer's first objection falls well short of establishing objectionable conduct such that the election must be set aside.^{7/} Accordingly, I overrule Objection 1.

^{5/} The Employer's security officer testified that he heard from his boss that election observers supposedly observed employees taking photos while voting and overheard communications by employees discussing transmitting those photos to other employees. Such testimony is nothing more than unreliable hearsay, and I afford it no weight.

^{6/} I also find no merit to the Employer's claim that the Hearing Officer "punished the Company for not being more heavy-handed" when it decided not to interrogate employees and investigate their phones for evidence of picture-taking. The Hearing Officer did no such thing. He evaluated the Employer's objections through the lenses of the record evidence, and based his findings on the same, as he was required to do.

^{7/} In so finding, I do not reach the issue of whether any particular employee's ballot should be voided. I have concluded that there is insufficient evidence to establish that voters were instructed to take pictures of their marked ballots and electronically transmit those pictures to a union supporter. Indeed, there is no record evidence establishing that any employee(s) engaged in objectionable voting conduct, nor do I find that any picture-taking activity in any way influenced the results of the election. Because I find no evidence of objectionable conduct, I do not reach the issue of whether an employee's cellphone picture of his marked ballot warrants voiding of that ballot, as doing so here would not change my conclusions.

OBJECTION 2

In Objection 2, the Employer asserts that a union supporter compiled an unlawful list of employees that voted in the election that was separate and apart from the official voting list. It further asserts that voters knew the list was being kept in order to record their vote, and each individual voter at issue sent a picture of his ballot to the union supporter. In its exceptions to the Hearing Officer's report, the Employer advances several arguments in support of its second objection, none of which have merit.

As the Hearing Officer noted, the only record evidence related to this objection is the employee statement to the Production Superintendent, made in jest, that he had 61 yes votes on his personal cellphone. Contrary to the Employer's argument, there is no evidence that the pro-Union employee contingent had a plan to take and share pictures to prove how they voted; the evidence only established that two employees had a separate one-on-one conversation about taking pictures to prove how they, individually, voted. There is no evidence that they disseminated their plans to other employees. Additionally, evidence that pro-Union employees held a meeting weeks before the election to discuss the perceived level of support for the Union does not, without more, establish that those same employees hatched a plan to take pictures of their marked ballot.

More importantly, there is absolutely no evidence that an unofficial list was actually kept. The Hearing Officer credited the employee's testimony that while he jokingly made the statement to the Production Superintendent that he had pictures of 61 yes votes on his cellphone, he in fact did not.^{8/} And as I stated earlier, I can find no basis in the record to reverse the Hearing Officer's credibility determination. Additionally, photographic documentation of an employee's marked ballot is not, standing alone, evidence that an unofficial voting list was kept; indeed, there is no evidence that photographs of a marked ballot were shared with other employees. Simply put, there is no evidence to support a finding that an unofficial list of voters was kept, or that eligible voters knew or believed that a list was being maintained.^{9/}

For the foregoing reasons, I agree with the Hearing Officer's recommendation regarding Objection 2, and I overrule the objection.

OBJECTION 3

Lastly, in its third objection, the Employer claims that eligible voters were subject to threats and unlawful coercion by union supporters who intimidated them in to sending photographs of completed ballots to the union supporter, thereby creating an atmosphere of fear

^{8/} The Employer points out that the employee witness did not offer the contents of his phone to prove he did not have pictures of marked ballots. It is, however, the Employer's burden to prove the merits of its objection; it is not the Petitioner's burden to disprove the alleged objectionable nature of certain conduct.

^{9/} For this reason, each case cited by the Employer in support of Objection 2 is inapplicable.

and reprisals. In support, the Employer relies upon the same interrelated arguments advanced in support of the first two objections discussed above.

The Hearing Officer concluded that no record evidence was presented in support of Objection 3. I agree. The only evidence that employees discussed taking pictures of their marked ballots, and the reasons surrounding their decision to do so, is an employee's testimony regarding his pre-election discussion with another employee. No evidence was presented that any other employees discussed taking pictures of their ballots. Nor is there any evidence that any other eligible voters knew about the discussion between the two aforementioned employees. Moreover, employees who testified that they were involved in organizing activity denied that any conversations or interactions with co-workers on the topic of unionization ever became hostile or threatening. As the Hearing Officer correctly found, there is no record evidence to support a determination that any employees were subjected to threats, intimidation, or coercion.^{10/}

In view of the foregoing, I overrule Objection 3.^{11/}

II. CONCLUSION

Based on the above and having carefully reviewed the entire record, the Hearing Officer's report and recommendations, and the exceptions and arguments made by the Employer, I overrule the objections, and I shall certify the Petitioner as the representative of the appropriate bargaining unit.

III. CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied, Industrial and Service Workers International Union, AFL-CIO, CLC and that it is the exclusive representative of all the employees in the following bargaining unit:

All full-time and regular part-time Production Specialists, Senior Production Specialists, Production Operators, Lead Production Operators, Pipeline Operators, Lead Pipeline Operators, Lead Well Operators, Welders, Senior Welders, Measurement Techs I, II and III, Lead and Senior Measurement Techs, Corrosion Techs, Lead Corrosion Techs, Senior Engine and Compression Analyst,

^{10/} The Employer's reliance on *Atlas Roll-Off Corp.*, 29-RC-114120 (NLRB, August 6, 2014), is misguided. There, the Board directed a second election because an agent of the employer threatened employees with termination if they did not take pictures of their ballot. Here, there is no evidence of any employees being so much as asked, let alone threatened, to take a picture of their marked ballot. The two cases are clearly distinguishable.

^{11/} The Employer requests that I implement, and enforce, a retroactive rule banning cellphones and other recording devices within voting booths or in the voting area. However, it is solely within the Board's purview to enact and implement such a rule.

EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)
Case 09-RC-220731

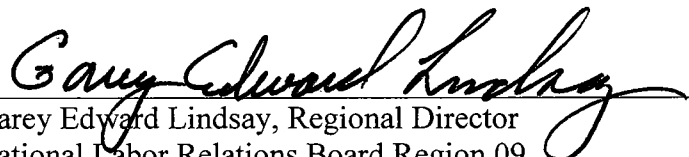
Equipment Operators, Lead Equipment Operators, Senior Equipment Operators, Compressor Techs, Senior Compressor and Lead Compressor Techs, Instrumentation Techs, Senior Instrumentation Techs, Lead Instrumentation Specialist, Engineering Techs, and Warehouse employees employed by the Employer at its 100 EQT Way, Pikeville, Kentucky 41501 facility, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

IV. REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by Monday September 10, 2018. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: August 27, 2018


Garey Edward Lindsay, Regional Director
National Labor Relations Board Region 09
550 Main Street Room 3003
Cincinnati, OH 45202-3271

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

**EQT PRODUCTION COMPANY
(SUBSIDIARY OF EQT CORPORATION)**

Employer

and

Case 09-RC-220731

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO,
CLC**

Petitioner

**AFFIDAVIT OF SERVICE OF REGIONAL DIRECTOR'S DECISION AND
CERTIFICATION OF REPRESENTATIVE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

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August 27, 2018

Date

Timothy C. Studer, Designated Agent of NLRB

Name

/s/ Timothy C. Studer

Signature